

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

**Minutes of a meeting held at the office of Slaughter & May, 1, Bunhill Row, London, EC1Y  
8YY**

**on 19 May 2015 at 1.00pm**

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Present: Dorothy Livingston (Herbert Smith Freehills LLP – Chairman)  
Nigel Ward (Ashurst LLP)  
Nick Swiss (Eversheds LLP)  
Penny Angell (Hogan Lovells LLP)  
Andrew McClean (Slaughter and May)  
John Davies (Simmons & Simmons LLP)  
Kirsty Thompson (Linklaters LLP as alternate for David Ereira)  
John Woodhall (Sidley Austin LLP as alternate for Matthew Denning)  
Charles Cochrane (Clifford Chance LLP)  
Emma Giddings (Norton Rose Fulbright LLP as alternate for Richard Calnan)  
Philip Wood (Allen & Overy LLP)  
Simon Roberts (Allen & Overy LLP)  
Presley Warner (Sullivan & Cromwell LLP)  
Sarah Smith (Akin Gump LLP)

In attendance: Kevin Hart (City of London Law Society)  
Emily Barry (Herbert Smith Freehills LLP)

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

Kevin Hart the new committee liaison manager for the City of London Law Society was welcomed to the meeting.

It was noted that the minutes of the last meeting which took place on 25 February 2015 had been circulated and were now approved.

Apologies were received from Richard Calnan (Norton Rose Fulbright LLP), Matthew Denning (Sidley Austin LLP), David Ereira (Linklaters LLP) and Mark Evans (Travers Smith LLP).

It was noted that Alan Newton has resigned from the Committee following his retirement from Freshfields LLP, and that the Committee were very grateful for his contribution, in particular in relation to matters relating to securitisation. It was further noted that it was agreed unanimously that Ken Baird, also of Freshfields LLP, should be invited to join the Committee.

**2. SECURED TRANSACTION REFORM**

Unfortunately Richard Calnan (chairman of the working party on secured transaction law reform) was unable to attend the meeting. However, prior to the meeting, he had provided members with an update on the status of various matters. In summary:

**2.1 Small Business, Enterprise and Employment Act ("SBEE Act") – proposed ban on non-assignment clauses in some business contracts regarding receivables**

It was noted that this is now law. Richard Calnan has recently published an article on this topic in the Journal of International Banking and Financial Law, copies of which were circulated to the members before the meeting.

Richard Calnan also attended a meeting with the Department for Business, Innovation and Skills, following the Committee's response of 2 February 2015 to the Consultation in relation to the then SBEE Bill (which is available on the CLLS website). He has subsequently agreed to produce a short note in relation to the effect of the SBEE Act on

the protection of contractual counterparties in respect of their set-off rights and discussed this topic with members of the working party.

It was noted that though the SBEE Act has been passed, these provisions are not yet in force since they require subsidiary legislation to come into effect.

## 2.2 **Secured Transactions Law Reform Project**

The working party met on 13 May and has produced a draft Secured Transactions Code and User Guide, which was circulated to the Committee for discussion, with a view to publishing it more widely in the summer.

## 2.3 **Insolvency – Insolvency Service Call for Evidence: European Commission Recommendation on a new approach to business failures and insolvency**

It was noted that further developments are awaited.

## 2.4 **Cape Town Treaty Ratification (Aircraft)**

It was noted that The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 was laid before Parliament on 26 March 2015, and they should come into force on the first day of the month following the expiration of three months after the date of the deposit, with Unidroit, of the United Kingdom's instrument of ratification, acceptance, approval of, or accession to, the Cape Town Convention. There is as yet no evidence in the London Gazette that this has happened.

## 2.5 **Financial Collateral Arrangements (No. 2) Regulations 2003**

Further developments awaited following submission of the Committee's letter to HM Treasury on 13 April 2015. It was noted that this point was independent of the wider issues of secured transactions law reform.

## 2.6 **State aid and security**

Reference was made to the recent judgment in Case C-690/13 *Trapeza Eurobank Ergasias AE v Agrotiki Trapeza tis Ellados AE (ATE) and Pavlos Sidiropoulos*. The Committee agreed that this judgment demonstrated that the grant of security under special rules in favour of a quasi-state entity could be deemed to be state aid if it gave an automatic economic advantage to that entity, but in the context of commercial transactions it was likely to be confined to its facts.

## 3. **CSD REGULATION 2014 (ARTICLE 3(2))**

Further developments awaited following referral of the point to the European Commission.

## 4. **SECURITISATION MARKET**

### 4.1 **Commission Consultation on a Framework for High Quality Securitisation**

Reference was made to the Committee submission to the Consultation, which is available on the CLLS website. Further developments awaited.

### 4.2 **Capital Markets Union**

It was noted that there is a conference in Brussels on 8 June 2015, following the end of the Consultation on the Green Paper on building a Capital Markets Union. Further developments awaited.

## 5. **AUDITORS/AUDIT DIRECTIVE**

It was noted that on 19 March 2015 the Loan Market Association had published a response in relation to the potential unintended consequences arising out of the EU Audit Directive for syndicate banks, as "public interest entities", who commission non-audit services in respect of one of their customers (rather than themselves) from a firm of auditors.

## 6. **EBA CONSULTATION ON SHADOW BANKING**

It was noted that shadow banking is outside the remit of the Committee, except where it relates to more general banking and financial law issues which are already being examined by the Committee. The Committee does not propose to respond to the Consultation.

## 7. **FINANCIAL STABILITY**

### 7.1 **Banking Reform Act 2013, Bail-in, EU Recovery and Resolution Directive proposal and Structural Regulation**

#### 7.1.1 **EU Banking Recovery and Resolution Directive ("BRRD")**

Further developments awaited.

#### 7.1.2 **UK**

In the UK, it was again noted that the various new statutory instruments were now in force. It was noted that the House of Commons research paper (published on 17 March 2015) is a useful summary document.

## 8. **FCA**

### 8.1 **Market study into investment and corporate banking**

It was reported that the terms of reference for the Financial Conduct Authority's (FCA's) wholesale market study into investment and corporate banking to assess whether competition in the sector is working properly have not yet been published (they were expected in the spring).

*Afternote:*

*The FCA published its final terms of reference on 22 May (see link). They will be investigating:*

- *Transparency of process in relation to new issues of debt and equity securities and in IPOs*
- *Client choice and behaviour and the impact of syndication*
- *How bundling and cross-subsidisation affect competition*
- *The potential benefits of reducing regulatory barriers to firms entering or expanding into primary markets.*

*In addition the Payment Systems Regulator (a division of the FCA with its own competition law powers) on 29 May published terms of reference for a market investigation of the supply of indirect access to payment systems by clearing members, covering all the main UK payment systems. It is also planning a market investigation into the ownership and competitiveness of infrastructure provision for the UK systems – much of this infrastructure is currently owned by the clearing members.*

<http://fca.org.uk/static/documents/market-studies/ms15-1-1.pdf>

[https://www.psr.org.uk/sites/default/files/media/PDF/Indirect-access-mkt-rev-terms-ref\\_0.pdf](https://www.psr.org.uk/sites/default/files/media/PDF/Indirect-access-mkt-rev-terms-ref_0.pdf)

8.2 **Competition concurrency**

The joint submission of the CLLS Regulatory and Competition Law Committees of 16 March 2015 on the FCA's concurrent powers Consultation was noted. The Committee is to keep a watching brief in relation to this.

9. **BREXIT**

It was noted that there is unlikely to be many issues for the Committee to review in relation to a possible UK exit from the EU, since the points arising will be predominantly regulatory or relating to insolvency proceedings. The Committee agreed to keep a watching brief.

10. **ANY OTHER BUSINESS AND CLOSE**

Penny Angell raised the recent significant delays in registration of charges that several firms had experienced at Companies House. It was noted that these have diminished.

Andrew McClean noted that if dated charges are held in escrow, they are required to be registered within the statutory time limits and that these are not suspended for the period of the escrow.

Kevin Hart noted the extremely wide range of work that the Committee undertakes.

There being no further business the meeting closed.

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