

SECURED TRANSACTIONS CODE

In July 2015, the Financial Law Committee of the City of London Law Society issued a draft Secured Transactions Code, which was circulated widely and made available on the CLLS website.

The purpose of the Code is to simplify and modernise the law of security in England and Wales. There had been a great deal of discussion - over many years - of the reform of the law in this area, and it seemed to us that the best way to take the discussion forward was to produce a draft of what a simplified and modernised law might look like. Only by doing that would it be possible to engage with the practicalities of what is involved.

We received a great deal of support for the idea of codifying, simplifying and modernising the law, and also for the general approach of the Code in doing this. We received a lot of comments from a wide variety of interested people, including many academics and practicing lawyers – both in private practice and in-house. The comments ranged from general discussion of the scope and structure of the Code to detailed comments on its terms.

We have an Advisory Group which consists of a broad range of interested people, and we are very grateful to them for questioning what we are doing and suggesting alternatives. We have also had useful comments from others who are not on the Advisory Group.

One matter on which there was a general consensus was that it would be helpful to provide a Commentary on the Code, the purpose of which would be to put the new law in the context of the existing law, to explain why the Code says what it does and to give examples of how the law should be applied in practice. We therefore decided that, at the same time as circulating a revised draft of the Code, we would circulate a first draft of the Commentary. In the same way that drafting the Code helped to clarify our thoughts about what the new law should look like, drafting the Commentary has forced us to analyse our reasons for doing things in particular ways, and has led us to revise the Code itself in a number of respects.

Three documents are attached:

- a revised version of the Code (Discussion Draft July 2016);
- a mark-up of the revised version of the Code from the previous version (Discussion Draft July 2015)
- the Code and the Commentary.

The discussions we have had so far have been extremely useful in clarifying the approach to the Code. It is now time to concentrate on the detail.

In recent years, it has become fashionable to describe the interpretation of contracts as a process of iteration, and that encapsulates very well what we are trying to do with the Code and Commentary. Only by testing how particular concepts and forms of words will apply in practice can we be comfortable that we are heading in the right direction. It is a long process, but it will be worthwhile if the result is a Code and Commentary which has been rigorously tested and which has broad support.

If you are interested in being involved in the discussion please let Richard Calnan know (Richard.Calnan@nortonrosefulbright.com).