

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

**Minutes of a meeting held at the office of Simmons & Simmons LLP, City Point, One
Ropemaker Street, London EC2Y 9SS
on 17 May 2016 at 1.00pm**

Present: Dorothy Livingston (Herbert Smith Freehills LLP – Chairman)
Penny Angell (Hogan Lovells LLP)
Richard Calnan (Norton Rose Fulbright LLP)
Charles Cochrane (Clifford Chance LLP)
John Davies (Simmons & Simmons LLP)
Matthew Dening (Sidley Austin LLP)
Ian Falconer (Freshfield Bruckhaus Deringer LLP) (alternate for Ken Baird)
Andrew McClean (Slaughter & May)
Simon Roberts (Allen & Overy LLP)
Sarah Smith (Akin Gump LLP)
Nick Swiss (Eversheds LLP)
Nigel Ward (Ashurst LLP)
Presley Warner (Sullivan & Cromwell LLP)
Jeremy Stokeld (Linklaters LLP)

In attendance: Rachael MacKay (Herbert Smith Freehills LLP)

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

It was noted that the minutes of the last meeting which took place on 24 February 2016 had been circulated and were now approved.

Apologies were received from David Ereira (Paul Hastings (Europe) LLP), Mark Evans (Travers Smith LLP) and Philip Wood (Allen & Overy LLP).

2. SECURED TRANSACTION REFORM

2.1 Small Business, Enterprise and Employment Act 2015 – future ban on non-assignment clauses in some business contracts regarding receivables

Nothing to report. Further developments awaited.

2.2 Secured Transactions Law Reform

It was reported that the draft Code was being amended and would be circulated to the working party and the Committee before being circulated to the wider advisory group in due course.

It was noted that the Law Commission's Consultation on the Land Registration Act (issued in March 2016) includes a section on further advances and tacking, and that the working party would respond on that section.

2.3 Recent developments on Secured Transactions Law Reform Project

It was noted that a further policy paper had been issued by the Secured Transactions Law Reform Project (lead by Louise Gullifer) in April. It was observed that there was a degree of convergence between the current proposals being made by that project and the Committee's working party, which was to be welcomed.

2.4 Bills of Sale

The Committee was reminded that it had sent a response to the Law Commission's Consultation Paper No. 225 on Bills of Sale and that recommendations were due to be published in the summer.

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

Nothing to report.

Afternote: The Treasury is taking steps under the Banking Act, apparently aimed at removing doubt on views raised by the Nolan case: see Banking Act 2009 (Commencement No. 5) Order 2016 which brings into force ss 255 and 256 of the Act.

2.6 **Releases of security (no payment of debt) and Companies House Forms MR04 and MR05**

It was noted that since Companies House were unable to change the wording on the MR forms without statutory change, and taking into account that this did not appear to be causing major issues in practice and could be explained to clients, this issue should become a Watching Brief item for the Committee until an opportunity arises to suggest appropriate changes to the Companies Act 2006.

3. **E-SIGNATURES**

It was reported that the Joint Working Party had recently sent to Counsel instructions and draft guidance with the aim of clarifying the law applicable to and supporting the use of e-signatures. A conference with Counsel (Mark Haggood QC) was being arranged. It was also noted that changes in law are coming into effect on 1 July 2016 due to the coming into force of the eIDAS Regulation.

The Committee also noted that the current Law Commission Consultation on the Land Registration Act includes a chapter on e-conveyancing.

4. **FINANCIAL STABILITY: ARTICLE 55 OF THE EU BANK RECOVERY AND RESOLUTION DIRECTIVE (BRRD) – CONTRACTUAL RECOGNITION OF BAIL-IN**

It was noted that Article 55 of the BRRD continues to cause concern and difficulties in the markets.

A working party of the Committee had prepared a response to the PRA's Consultation on amendments to the PRA Rule book regarding Article 55 (planned to come into force on 1 July), which was due to be sent imminently; the Committee had until the following day to sign off.

Afternote: This response is now available on the CLLS website.

5. **FCA WHOLESALE MARKET STUDY INTO INVESTMENT AND CORPORATE BANKING**

It was noted that the FCA had published an interim report in April which recommended deletion of any "Right of First Refusal" clauses for future mandates in appointments by corporates eg of lead managers, on the grounds that they restrict customer choice and competition.

6. **UK REFERENDUM ON 23 JUNE 2016.**

It was noted that the UK referendum on whether to continue its membership of the EU had been set for 23 June 2016. There was a brief discussion of the implications for the financial sector.

7. **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.