

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

**Minutes of a meeting held at the office of Eversheds LLP, 1 Wood Street, London EC2V 7WS  
on 14 September 2016 at 1.00pm**

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Present: Dorothy Livingston (Herbert Smith Freehills LLP – Chairman)  
Penny Angell (Hogan Lovells LLP)  
Charles Cochrane (Clifford Chance LLP)  
John Davies (Simmons & Simmons LLP)  
Matthew Denning (Sidley Austin LLP)  
Mark Evans (Travers Smith LLP)  
David Ereira (Paul Hastings (Europe) LLP)  
Ian Falconer (Freshfield Bruckhaus Deringer LLP) (alternate for Ken Baird)  
Andrew McClean (Slaughter & May)  
Simon Roberts (Allen & Overy LLP)  
Nick Swiss (Eversheds LLP)  
Presley Warner (Sullivan & Cromwell LLP)  
Philip Wood (Allen & Overy 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 17 May 2016 had been circulated and were now approved.

Apologies were received from Richard Calnan (Norton Rose Fulbright LLP), Sarah Smith (Akin Gump LLP), Nigel Ward (Ashurst LLP) and Jeremy Stokeld (Linklaters 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.

**2.2 CLLS Secured Transactions Law Reform/Code**

It was noted that the working party continues to progress the preparation of a draft Code.

**2.3 Bills of Sale**

The Committee had responded to the consultation on Bills of Sale and awaited the recommendations of the Law Commission.

*After note: The Law Commission published its recommendations for reform on 12 September. These included repealing the Bills of sale Act and replacing it with a new Good Mortgages Act, replacing the concept of bills of sale, personal chattels etc with "goods mortgages" and "vehicle mortgages", no requirement to register vehicle mortgages at the High Court, requiring mortgages over goods (not vehicles) to continue to be registered at the High Court but in future to move this to Companies House, implementing an electronic register of goods mortgages and that general assignments of book debts by unincorporated businesses should continue to be registered at the High Court. The Committee should consider the proposals and next steps.*

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

It was noted that the Latvian courts had referred the interpretation of the Financial Collateral Directive (2202/47) to the European Court of Justice, including the question as to the level of control which a financial collateral taker must have over financial collateral.

3. **E-SIGNATURES**

It was noted that the JWP guidance note on the use of electronic signatures under English law had been issued on 25 July 2016. It may require review as practice develops.

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

The Committee noted that the PRA Rule Book had been amended with effect from 1 August 2016 to which sought to clarify the PRA's expectations on BRRD firms when determining impracticability in the context of the contractual recognition of bail-in requirement under Article 55 of the BRRD.

However concerns regarding the breadth of Article 55 remained in the market.

It was also noted that the EBA had recently issued its Report on Implementation and Design of the MREL Framework (dated 19 July 2016) which included observations that credit institutions were facing many practical difficulties in including contractual bail-in recognition clauses. It was noted that ISDA's response to the Interim Report (dated 30 August) had restated its concerns regarding Article 55 and its impact on the derivatives markets. The Committee would write to the EBA in support of the ISDA response.

5. **INSOLVENCY**

The Committee was reminded that a response the latest IS consultation on the corporate insolvency framework had been submitted on 8 July and that the outcome of that consultation was awaited.

6. **FCA WHOLESALE MARKET STUDY INTO INVESTMENT AND CORPORATE BANKING AND CMA MARKET INVESTIGATION INTO PERSONAL AND SME BANKING AND EU COMMISSION ACTIVITY**

The Committee was reminded that various investigations were ongoing and that various recommendations and reports had been issued in relation to retail banking, benchmarks, LIBOR etc, but none of which were central to this Committee's remit.

7. **BREXIT – UK REFERENDUM RESULT**

The Committee discussed various issues and whether a working group should be set up. It was felt that, at this stage, there was no need for this Committee to set up a formal working group and that it was more appropriate for this Committee to consider issues on an ad hoc basis as they arise.

8. **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.**