

**CITY OF LONDON LAW SOCIETY**  
**FINANCIAL LAW COMMITTEE**  
**Minutes of a meeting held at the office of**  
**Akin Gump LLP, 10 Bishops Square, London E1 6EG**  
**on 8 February 2017 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)  
David Ereira (Paul Hastings (Europe) LLP)  
Emma Giddings (alternate for Richard Calnan) (Norton Rose Fulbright LLP)  
Andrew McClean (Slaughter & May)  
Simon Roberts (Allen & Overy LLP)  
Sarah Smith (Akin Gump LLP)  
Jeremy Stokeld (Linklaters LLP)  
Nick Swiss (Eversheds LLP)  
Nigel Ward (Ashurst LLP)  
Philip Wood (Allen & Overy 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 14 December 2016 had been circulated and were now approved.

Apologies were received from Ken Baird (Freshfield Bruckhaus Deringer LLP), Richard Calnan (Norton Rose Fulbright LLP), Mark Evans (Travers Smith LLP) and Presley Warner (Sullivan & Cromwell LLP).

**2. SECURED TRANSACTION REFORM**

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

There was nothing new to report in relation to the Government's previous proposals to nullify non-assignment provisions in certain business to business contracts. The Committee will continue to watch for developments.

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

It was noted that progress continues to be made by the security reform working party in relation to this project, including the draft code which was last circulated in July 2016.

It was also noted that various revised papers had been issued by the Secured Transaction Law Reform Project in January which included papers on fixed and floating charges, priorities, registration, sales of receivables and asset finance.

**2.3 Bills of Sale**

In view of the Law Commission's latest recommendations in relation to replacing bills of sale with a new goods mortgage, rather than abolishing them, the Chairman proposed that the Committee should take steps to urge the appropriate government department to reconsider the proposals.

**2.4 European Commission (EC): Effects of assignment of claims on third parties**

The Committee was reminded that, on 29 September 2016, the EC had adopted a Report on the effectiveness of an assignment or subrogation of a claim against third parties and

the priority of the assigned or subrogated claim over the right of another person. The Report seeks to identify the main problems related to the lack of uniform rules and presents three approaches to address this which are based on: the law of the contract between assignor and assignee, the law of the assignor's habitual residence and the law applicable to the assigned claim. It was noted that the assignor's habitual residence was currently the favoured back-stop.

It was noted that a public consultation and a study on traded securities and claims was expected to be launched soon.

The Committee would therefore consider the consultation when it was released.

### 3. **E-SIGNATURES**

The Chairman suggested that contact be made with the chairman of the Joint Working Party on e-signatures to take account of recent developments as regards the Land Registry.

### 4. **UK GOVERNMENT'S ANNOUNCEMENT OF A PATIENT CAPITAL REVIEW**

It was noted that the UK Government had recently announced its plan to undertake a review of all aspects of the financial system affecting the provision of long-term finance to growing innovative firms and that a consultation was due to be launched in the spring, with recommendations being made in the autumn.

The Committee would consider the consultation when released.

### 5. **FINANCIAL STABILITY**

#### 5.1 **EU BRRD Article 55**

There was nothing new to report on this issue.

#### 5.2 **EU proposal for a Directive to amend the Bank Resolution and Recovery Directive (2014/59/EU) (BRRD) as regards the ranking of unsecured debt instruments in bank insolvency creditor hierarchy**

It was reported that the EU had recently issued a proposal for a Directive to amend the BRRD which would require all Member States to have a new statutory tier of "non-preferred" senior debt for banks; that is to say a statutory law of subordinated debt. It was noted that the proposed Directive is required to be transposed into national law by "[June 2017]" and that its date of application is fixed for "[July 2017]".

Afternote: This timetable seems to have slipped.

The Chairman reported that HM Treasury were looking for assistance in preparing to implement this creditor hierarchy, so interested members should make themselves known.

### 6. **INSOLVENCY**

#### 6.1 **New European Commission (EC) Proposal for a Directive on Insolvency, Restructuring and Second Chance**

Whilst there was nothing new to report on the EC's proposals for a new Directive on business insolvency, the Committee would need to consider the proposals when they become available.

#### 6.2 **Insolvency Service Review on Corporate Insolvency Framework**

The Committee was reminded that it had responded to the Insolvency Service consultation on the Corporate Insolvency Framework in July 2016, and that next steps were awaited.

7. **BREXIT**

The Committee noted the White Paper "Legislating for the United Kingdom's withdrawal from the European Union" issued in March, which sets out the Government's approach to the Great Repeal Bill, and would continue to watch developments.

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.**