

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

**Minutes of a meeting held at the office of  
Paul Hastings (Europe) LLP, Ten Bishops Square, Eighth Floor, London E1 6EG  
on 17 May 2017 at 1.00pm**

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Present: Dorothy Livingston (Herbert Smith Freehills LLP – Chairman)  
Penny Angell (Hogan Lovells LLP)  
Karl Clowry (alternate for David Ereira) (Paul Hastings (Europe) LLP)  
Charles Cochrane (Clifford Chance LLP)  
John Davies (Simmons & Simmons LLP)  
Matthew Denning (Sidley Austin LLP)  
Mark Evans (Travers Smith 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)  
Presley Warner (Sullivan & Cromwell LLP)

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

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

It was noted that the minutes of the last meeting which took place on 8 February 2017 had been circulated and (subject to minor corrections) were now approved.

Apologies were received from Ken Baird (Freshfield Bruckhaus Deringer LLP), Richard Calnan (Norton Rose Fulbright LLP), David Ereira (Paul Hastings (Europe) LLP), Nigel Ward (Ashurst LLP) and Philip Wood (Allen & Overy 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**

Nothing to report.

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

Work is ongoing.

**2.3. European Commission Consultation on effects of assignment of claims on third parties (April 2017)**

It was noted that the consultation was potentially very wide in scope. In particular, it was noted that the outcome of the consultation could result in changes being made to Article 14 (Voluntary assignment and contractual subrogation) of the Rome 1 Regulation (regarding the law applicable to contractual obligations).

It was reported that anyone with views might wish to share them with Joanna Perkins (chief Executive, FMLC). The Committee would consider its own response.

Afternote: the Committee responded and the text is available on the CLLS website.

## **2.4. Bills of Sale**

As had been agreed at previous meetings, the Chairman will write to the appropriate government department to urge them to reconsider the current proposal to replace bills of sale with a new goods mortgage, and instead to abolish bills of sale.

## **3. INTRAGROUP GUARANTEES, INTRAGROUP LOANS AND ICAEW AND ICAS GUIDANCE ON DISTRIBUTIONS (APRIL 2017)**

It was reported that the Institute of Chartered Accountants in England and Wales (ICAEW) and the Institute of Chartered Accountants of Scotland (ICAS) had published an updated version of Guidance on Realised and Distributable Profits under the Companies Act 2006 (Tech 02/17BL) in April.

The Guidance includes new commentary on intragroup transactions. Sections 9.45 to 9.69 consider what intragroup transactions might involve a distribution and include a statement that "*there are other intra-group transactions that may, as a matter of law, involve a distribution, including for example....guaranteeing the debt of its parent or fellow subsidiary without receiving an appropriate fee*".

Since the Guidance could have considerable implications for finance transactions, the Committee's view was that this should be considered further in conjunction with the CLLS Company Law Committee. It was agreed that the Chairman would contact the chairman of that Committee to take matters forward as soon as possible.

Afternote: work in on going with a joint working party of the Committee and the Company Law Committees of the CLLS and the Law Society.

## **4. CALL FOR EVIDENCE ON UK GOVERNMENT PROPOSALS FOR A NEW REGISTER OF BENEFICIAL OWNERS OF OVERSEAS COMPANIES WHICH OWN UK PROPERTY OR PARTICIPATE IN UK GOVERNMENT PROCUREMENT**

The Committee was reminded that a Call for Evidence on proposals to create a new register showing who owns and controls overseas legal entities which own UK property or participate in UK government procurement had been published in April and that the deadline for submitting responses had expired on 15 May.

The Committee had had the advantage of reviewing the submission made by the Loan Market Association in draft, and had formally endorsed the views expressed therein by a letter of support dated 15 May 2017.

## **5. E-SIGNATURES**

As discussed at previous meetings, in view of recent developments as regards the Land Registry, in particular, revised Practice Guide 8, it was agreed that the Chairman would contact the chairman of the Joint Working Party on e-signatures to consider matters further.

Afternote: work is on-going and the FMLC has recently revived its working group on the execution of documents, which will look further at this issue.

## **6. COMPETITION**

### **6.1. FCA Consultation (CP16/31) Investment and corporate banking: prohibition of restrictive contractual clauses**

Nothing to report.

Afternote: the FCA has now ruled and set out a timetable for discontinuing these clauses, and indicated that it would act against use of the clauses after the relevant time had expired. Note that the question of legality under competition law arises without regard to that timetable.

**6.2. European Commission Management Plan 2017 and FCA Round-up (February 2017) – syndicated lending**

It was noted that the European Commission Management Plan 2017 and FCA Round-up both referred to a possible study on potential competition issues in loan syndication. The Committee would watch for further developments.

Afternote: this is beginning and the Commission will be seeking information from market participants.

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

Nothing to report. Further activity expected in the autumn.

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

**8.1. EBA RTS adopted by European Commission and Article 55 BRRD**

Nothing to report.

**8.2. EU proposal to require all Member States to have a statutory tier of "non-preferred" senior debt**

Nothing to report.

Afternote: the Commission is consulting on proposals for harmonization of the moratorium tool. The Committee has decided to support ISDA's submissions, advocating either banning this tool or curtailing its use to no more than a few days (less than 5) in total for all phases of resolution.

**9. INSOLVENCY**

**9.1. New European Commission Proposal for a Directive on Insolvency, Restructuring and Second Chance**

The Committee was reminded of the European Commission proposals. However, in view of the minimum implementation period of two years, it was clear that the UK will have left the EU before these proposals take effect. Therefore the UK will be under no legal obligation to implement these proposals.

**9.2. Insolvency Service Review on Corporate Insolvency Framework (25 May 2016)**

Nothing to report.

**10. BREXIT AND GENERAL ELECTION**

It was noted that a White Paper for the Great Repeal Bill had been published and that a general election had been called for 8 June.

Afternote: Following the Election, the Government has published what is now called the Withdrawal Bill. This would retain both directly applicable EU law (eg EU Regulations) and UK implementation of Directives as part of domestic law despite the repeal of the European Communities Act 1972, under which most implementation has been made. There are then provisions for changes to the laws to make them fit for purpose post Brexit, which allow for changes including of primary legislation by statutory instrument. The Bill also contains rules on interpretation and enforcement of these laws and on the extent to which the rulings of the CJEU are binding or may be taken notice of. There are opportunities for issues of legal uncertainty to arise in this process and the Committee will keep a watching brief as matters develop.

**11. REGULATORY**

The Committee considered the FCA Discussion Paper on UK Primary Markets Landscape DP17/2 regarding the structure of the market for bond issues and the comparative

successes of different jurisdictions. The Committee concluded that since the issues raised appeared to be primarily regulatory and tax related, and not related to transactional matters, the Committee was not in a position to comment at this stage but would keep watch for further developments.

**12. ANY OTHER BUSINESS AND CLOSE**

- 12.1.** The Committee's attention was drawn to The Criminal Finances Act 2017 (which had yet to come into force) which created new offences for failure to prevent tax evasion.
- 12.2.** There being no further business the meeting closed.

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