

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

**Minutes of a meeting held at the office of
Hogan Lovells LLP, Atlantic House, Holborn Viaduct, London EC1A 2FG
on 10 January 2018 at 1.00pm**

Present: Dorothy Livingston (Herbert Smith Freehills LLP – Chairman)
Penny Angell (Hogan Lovells LLP)
Ken Baird (Freshfield Bruckhaus Deringer LLP)
Karl Clowry (alternate for David Ereira) (Paul Hastings (Europe) LLP)
Charles Cochrane (Clifford Chance LLP)
Matthew Denning (Sidley Austin LLP)
Craig Jones (alternate for Presley Warner) (Sullivan & Cromwell LLP)
Jeremy Stokeld (Linklaters LLP)
Nick Swiss (Eversheds LLP)
Nigel Ward (Ashurst LLP)

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

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

The Chairman opened the meeting and reported that apologies had been received from David Ereira (Paul Hastings (Europe) LLP), Richard Calnan (Norton Rose Fulbright LLP), Mark Evans (Travers Smith LLP), Andrew McClean (Slaughter & May), Simon Roberts (Allen & Overy LLP), Sarah Smith (Akin Gump LLP) and Presley Warner (Sullivan & Cromwell LLP).

It was noted that the minutes of the last meeting which took place on 11 October 2017 had been circulated and were now approved.

2. BRIEFING ON MEETING OF CHAIRS OF CLLS SPECIALIST COMMITTEES

Kevin Hart of the CLLS was welcomed to the meeting. Kevin thanked the Committee for its ongoing contribution and gave an update on the work and future of the CLLS, including possible work on Brexit. It was noted that as English Contract Law had not been affected by EU Law (except in the area of conflict of laws) the burden on this Committee of Brexit related legislation was relatively small.

3. SECURED TRANSACTION REFORM

3.1 The Business Contract Terms (Assignment of Receivables) Regulations 2017 and The Small Business, Enterprise and Employment Act 2015 sections 1 and 2 – ban on non-assignment clauses in some business to business contracts regarding receivables

The Committee was reminded that the revised draft of The Business Contract Terms (Assignment of Receivables) Regulations 2017 which had been laid in mid-September 2017 had been withdrawn in November, largely due to the Committee's paper dated 13 October 2017, which had been supported by ISDA and the LMA.

It was reported that members of the Committee and others were involved in dialogue with DBEIS on a potential revised, more narrow, version of the regulations. It was likely this would lead to revised regulations being laid before Parliament early in the year.

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

Nothing to report. The Committee would continue to keep a watching brief.

3.3 **Goods Mortgages to replace Bills of Sale**

It was noted that the final form Goods Mortgages Bill had been issued by the Law Commission on 24 November 2017, together with a report and proposal for the Treasury to sanction putting the Bill through Parliament using the "uncontroversial" short form process for Law Commission Bills, following which some members of the Committee had met with the Treasury and the Law Commission to discuss the Bill. The Committee did not believe this Bill is suitable Bill for the short form procedure.

Further developments are awaited.

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

Now that other more pressing related issues had been addressed, work on the proposed code would resume soon.

4. **LIBOR – POSSIBLE PLANNED END FOR THE END OF 2021**

The working party set up in response to the FCA's announcement of the proposed end of panel bank support for LIBOR at the end of 2021, had met. It had been decided that, since the market would need to make more progress on formulating a suitable replacement for LIBOR in the loan market, in the meantime the working party should focus its discussions on the impact on legacy contracts.

It was also noted that the market-led working group on sterling risk-free rates now had an extended mandate and broader participation, and that two new sub-groups had been set up in relation to loans (chaired by Claire Dawson LMA) and bonds (chaired by Paul Richards ICMA). The Committee's working party would keep in touch with their work.

Finally, it was noted that the LMA had held a seminar on LIBOR earlier in the week which some Committee members had attended and found to be a very helpful event.

5. **INTRAGROUP GUARANTEES, INTRAGROUP LOANS AND ICAEW AND ICAS GUIDANCE ON DISTRIBUTIONS (TECH 02/17BL APRIL 2017 – SECTIONS 9.45 TO 9.68)**

It was reported that a conference had been held at Erskine Chambers in November, which had indicated that there is considerable support for the CLLS position on the legal analysis of certain intragroup transactions, such as guarantees.

The work of the CLLS and Law Society joint working party is ongoing.

6. **CALL FOR EVIDENCE ON 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, in April 2017, the government had issued 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.

It was noted that in December, the government's Anti-Corruption Strategy 2017-2022 stated that a draft bill would be published for the establishment of a public register of beneficial ownership of overseas legal entities (para 2.2).

The Committee would therefore keep watch on developments.

7. **COMPETITION**

7.1 **EC Management Plan 2017 – Syndicated lending**

Nothing further to report as yet. The Committee would keep a watching brief.

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

Nothing to report.

8.1 **Resolvability of Too Big to Fail Financial Institutions – BRRD Proposed Moratoria**

The Committee supported the ISDA work on moratoria which sought to persuade the Commission to tighten a proposed amendment which could result in lengthy moratoria which would be extremely damaging to the recovery process.

8.2 **EBA Regulatory Technical Standards adopted by Commission (March 2016) – do not address concerns regarding breadth of Article 55**

Nothing to report.

9. **ELECTRONIC SIGNATURES AND EXECUTION OF DOCUMENTS**

The Committee was reminded that the eIDAS Regulation (EU No. 910/2014) and the UK regulations on electronic identification and trust services for electronic transactions (2016/696) had come into force in July 2016. The CLLS JWP guidance note on electronic signatures had also been issued in July 2016.

The Committee was also reminded that the Financial Markets Law Committee had established a working group to look at execution of documents in all ways, and more recently, that the Law Commission had announced a project specifically on electronic signatures.

The Committee would keep a watching brief on developments.

Afternote: the Committee has been contacted by the Law Commission and asked to give evidence.

10. **INSOLVENCY**

10.1 **European Commission Proposal for a Directive on Preventive restructuring frameworks, second chance and measure to increase efficiency in restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU**

Nothing to report.

10.2 **Insolvency Service Review on Corporate Insolvency Framework (May 2016)**

Nothing to report.

11. **BREXIT**

There was general discussion about Brexit and banking.

It was noted that a huge volume of statutory instruments were likely to be required in relation to financial services and that some co-ordination of effort among firms would be beneficial to assist the Regulatory Committee in tackling this.

12. **ANY OTHER BUSINESS AND CLOSE**

12.1 The recent case of *Golden Belt 1 Sukuk Company v BNP Paribas* [2017] EWHC 3182 (*Comm*) relating to an arranger's duty of care in a capital markets transaction, was noted.

12.2 The timing of the meetings for the next calendar year were discussed and agreed in principle.

12.3 There being no further business the meeting closed.

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