

CITY OF LONDON LAW SOCIETY
FINANCIAL LAW COMMITTEE
Minutes of a meeting held at the office of
Freshfields Bruckhaus Deringer LLP, 65 Fleet Street, London EC4Y 1HT
on 9 January 2019 at 1.00pm

Present: Dorothy Livingston (Herbert Smith Freehills LLP – Chairman)
Penny Angell (Hogan Lovells LLP)
Catherine Balmond (Freshfields Bruckhaus Deringer LLP) (alternate for Ken Baird)
James Bresslaw (Simmons & Simmons LLP)
Richard Calnan (Norton Rose Fulbright LLP)
Charles Cochrane (Clifford Chance LLP)
David Ereira (Paul Hastings (Europe) LLP)
Mark Evans (Travers Smith LLP)
Ian Jack (Baker & McKenzie LLP) (alternate for Matthew Dening)
Andrew McClean (Slaughter & May)
Jeremy Stokeld (Linklaters LLP)
Nick Swiss (Eversheds LLP)
Nigel Ward (Ashurst LLP)
Presley Warner (Sullivan & Cromwell LLP)

In attendance: Rachael MacKay (Herbert Smith Freehills LLP)

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

The Chairman opened the meeting and reported that apologies had been received from Ken Baird (Freshfield Bruckhaus Deringer LLP), Matthew Dening (Baker & McKenzie LLP), Simon Roberts (Allen & Overy LLP) and Sara Smith (Akin Gump LLP).

It was noted that the minutes of the last meeting which took place on 3 October 2018 had been circulated and were now approved.

2. SECURED TRANSACTION REFORM

2.1 The Business Contract Terms (Assignment of Receivables) Regulations 2018

It was noted that The Business Contract Terms (Assignment of Receivables) Regulations 2018 had come into force on 30 November 2018. They apply to contracts entered into on or after 31 December 2018.

The Chairman thanked the Committee for its persistence in achieving a much scaled back and more workable version of the legislation.

2.2 CLLS Secured Transactions Law Reform/Code

The chair of the Committee's working group (Richard Calnan) reminded the Committee of the one day event which was being hosted by Norton Rose Fulbright on 30 April 2019 to discuss matters further.

2.3 European Commission (EC): Proposed Regulation on effects of assignment of claims on third parties

The Committee was reminded that the further EU consultation had ended on 18 October 2018 and that the UK Government had exercised its option not to opt into the proposed regulation.

It was understood that negotiations were ongoing between EU Member States to try to reach a common position that the European Parliament could endorse.

The Committee would watch for further developments.

3. **LIBOR – POSSIBLE PLANNED END FOR END OF 2021**

The Committee's working party chairman (Charles Cochrane) reported on recent developments, including meeting with the current Libor administrator, ICE. Concern remained about issues for legacy contracts and about whether the substitutes under discussion would always be responsive to the needs of borrowers.

4. **ELECTRONIC SIGNATURES**

It was noted that the Committee's response to the Law Commission consultation on e-signatures (CP237) had been submitted on 23 November 2018.

Afternote: The outcome of the Law Commission's consultation is now expected in the summer. The Commission's separate smart contracts project has been put on hold so as not to clash with a new Fintech project under the aegis of the Law Tech Delivery Panel.

5. **DRAFT REGISTRATION OF OVERSEAS ENTITIES BILL**

It was noted that the deadline for responding to the draft Bill had passed on 17 September 2018 and that the LMA and many firms had responded.

The Committee would watch for further developments.

6. **PRA CONSULTATION CP6/18: CREDIT RISK MITIGATION, INCLUDING LEGAL OPINIONS, AND PROPOSED CHANGES TO SUPERVISORY STATEMENT 17/13**

There was nothing to report on this.

7. **COMPETITION**

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

It was noted that details of the outcome of the EC's study into potential competition law issues in loan syndications was still awaited.

7.2 **Competition Law Committee's submission on new National Security Controls – co-operation with Company Law Committee**

The Committee was reminded that, following the last meeting, members had approved the form, and sending, of a letter of support for the submission made by the CLLS Competition Law Committee on the National Security White Paper. This is available on the CLLS website. Particular concerns were that the breadth of the legislation could catch capital markets lending, trading in loan participations, M&A facilities and real property transactions which had no impact at all on national security. This could chill inward investment.

The Committee would watch for further developments.

Afternote: it is expected that HMG will publish a response with or without draft legislation later this year. Meanwhile EU law in this field, as well as the UK's 'stop gap' legislation are now in force: see EU and CMA websites for details.

8. **FINANCIAL STABILITY: EU BANK RECOVERY AND RESOLUTION DIRECTIVE (BRRD), RESOLVABILITY OF TOO BIG TO FAIL FINANCIAL INSTITUTIONS AND ARTICLE 55 (CONTRACTUAL RECOGNITION OF BAIL-IN)**

It was reported that (in view of Brexit) many financial institutions are requiring Article 55 BRRD provisions to be included in English law finance documents now.

Other than that, there was nothing new to report on amendments to the text of Article 55.

9. **INSOLVENCY AND CORPORATE GOVERNANCE – GOVERNMENT RESPONSE TO CONSULTATION**

It was reported that the CLLS Insolvency Law Committee is working with the Insolvency Service to draft the proposed changes to insolvency law and avoid unintended consequences.

The Committee would continue to keep a watching brief on developments.

10. **BREXIT**

It was noted that legislation and other regulation on financial services continues to be published by the Treasury and the PRA to address risks of a "no deal" Brexit at end March 2019.

The Committee's attention was also drawn to the latest useful and succinct LMA Paper: Turning off the Liquidity Tap (November 2018).

Afternote: most of the "no deal" Brexit legislation has now passed, but it is still unclear whether it will be needed or whether the UK will leave the EU without a deal. The earliest date for leaving the EU is now 12 April 2019, but this could be extended to 22 May 2019 followed by a transition in the event the deal negotiated between HMG and the EU receives Parliamentary Approval. There is also the possibility the UK will stay in the EU (maybe as long as to end 2020) whilst the leaving terms are reconsidered, but this is far from certain.

The EU has published some time limited equivalence decisions that would enable EU regulated bodies to participate in some forms of financial trading in London in the short term if there is no deal. A full equivalence exercise would be expected once the UK became a third country.

11. **FINANCIAL STABILITY**

There was nothing to report on this, save for the completion of the move to ring fenced banks on 1st January 2019. It remained to be seen whether this would significantly affect markets and/or achieve the intended benefits.

12. **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.