

**CITY OF LONDON LAW SOCIETY**  
**FINANCIAL LAW COMMITTEE**  
**Minutes of a meeting held at the office of**  
**Clifford Chance LLP, 10 Upper Bank Street, London, E14 5JJ**  
**on 10 April 2019 at 1.00pm**

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Present: Dorothy Livingston (Herbert Smith Freehills LLP – Chairman)  
Charles Cochrane (Clifford Chance LLP)  
Matthew Denning (Baker & McKenzie LLP)  
Simon Roberts (Allen & Overy LLP)  
Philip Snell (Slaughter & May) (alternate for Andrew McClean)  
Nick Swiss (Eversheds LLP)  
Andrew Taylor (Hogan Lovells LLP (alternate for Penny Angell)

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 Penny Angell (Hogan Lovells LLP), Ken Baird (Freshfield Bruckhaus Deringer LLP), James Bresslaw (Simmons & Simmons LLP), Richard Calnan (Norton Rose Fulbright LLP), David Ereira (Paul Hastings (Europe) LLP), Mark Evans (Travers Smith LLP), Andrew McClean (Slaughter & May), Sarah Smith (Dechert LLP), Jeremy Stokeld (Linklaters LLP), Nigel Ward (Ashurst LLP) and Presley Warner (Sullivan & Cromwell LLP).

It was noted that the minutes of the last meeting which took place on 9 January 2019 had been circulated and were now approved.

**2. SECURED TRANSACTION REFORM**

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

The Committee was reminded of the upcoming conference on security reform which was due to take place on 30 April 2019 at the offices of Norton Rose Fulbright.

**2.2 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 noted that in February 2019 the European Parliament had rejected the proposed exclusions for securitisations and novations, but had added protection for the original debtor. Therefore, at present, there appeared to be no agreement on the proposals between the European Council and European Parliament. This state of play means that it is not clear when or if the EU legislative process will be completed or whether, even if it is, it will become part of UK conflicts law (due to the UK's opt out and Brexit).

The Committee would keep a watching brief on developments.

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

The Committee's working party chairman (Charles Cochrane) reported on recent developments and key issues. The Committee would continue to keep a watching brief.

#### 4. **ELECTRONIC SIGNATURES**

It was reported that the outcome of the Law Commission's consultation is expected in the summer.

It was also reported that the Law 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.

Afternote: The Committee's submission to the Law Tech Delivery Panel focusing on analysis of the application of current law is available on the CLLS website.

#### 5. **GOVERNMENT PROPOSALS FOR A NEW REGISTER OF BENEFICIAL OWNERS OF OVERSEAS COMPANIES WHICH OWN UK PROPERTY**

There was nothing to report on this.

#### 6. **COMPETITION**

##### 6.1 **European Commission Management Plan 2017 – Syndicated lending**

The meeting was informed that the European Commission had published its long awaited study on syndicated loans on 8 April. While the report concludes that market soundings or the tying of loans to ancillary services could lead to collusion, it sees that there are important safeguards in the industry which, in practice, reduce this risk.

However, one thing to note is that if banks are continuing to use right of first refusal for future deals in agreements with lenders outside the UK (a practice banned in the UK by the FCA), the EU Commission could be encouraged by this report to consider opening proceedings against the banks concerned. Other than this example, evidence for tying practices seems to come only from the Spanish market.

The comments on the secondary market, which is less developed in Europe than in the USA, should also be noted, as well as those on limitations applying during the construction phase of a project loan.

##### 6.2 **New National Security White Paper - Competition Law Committee's submission and cooperation 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, none of which had any impact on national security. This could chill inward investment.

It was reported that an interim UK regime is already in force and the Government's response to the consultation on the new UK regime is awaited.

It was also reported that the new EU framework law in this area has come into force (Regulation (EU) 2019/452) but will not apply until 11<sup>th</sup> October 2020. It is uncertain whether it will affect UK practice in any way, given the UK's intention to leave the EU.

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

##### 7.1 **Resolvability of Too Big to Fail Financial Institutions – BRRD Proposed Moratoria and amendments to Article 55: BRRD II**

It was reported that, in February 2019, the EU Council had issued a press release announcing its endorsement of the text of the BRRD II Directive. The proposed

amendments would be helpful in practice. It is likely that BRRD II will be adopted in the first half of 2019.

Afternote: Directive (EU) 2019/879 (BRRD II) entered into force at end of June 2019 and Member States must legislate by 28 December 2020. This Directive is accompanied by Regulation (EU) 2019/877 on the loss absorbing and recapitalisation capacity of credit institution as investment firms (SRMR II). This will apply from 28 December 2020. In the event that the UK has left the EU without any transitional period, it may require primary legislation to adopt BRRD II and SRMR II. The Treasury is looking for a way to pass legislation to cover implementation of all EU financial legislation which the UK supports caught in this potential "black hole".

## 8. **INSOLVENCY**

### 8.1 **Insolvency and Corporate Governance – Government Response to Consultation**

There was nothing to report on this. The Committee will keep a watching brief.

Afternote: DBEIS issued a consultation paper on Corporate Transparency and Register Reform in May 2019. The Committee is contributing to a response led by the Company Law Committee due for submission by 5<sup>th</sup> August 2019.

### 8.2 **Financial Collateral Arrangements (No. 2) Regulations**

It was reported that HM Treasury are working some amendments to reflect the Insolvency Rules 2016 and to correct an omission to refer to the Northern Ireland Rules. A dialogue had commenced regarding possible other changes to the Regulations, but this was unlikely to be progressed quickly due to other Parliamentary pressures (Brexit SIs).

## 9. **BREXIT**

At the time of the Committee meeting, the status of the Withdrawal Agreement remained uncertain.

The Committee was reminded that "Exit Day" under The European Union (Withdrawal) Act 2018 and EU law is 12 April 2019 or later (no deal Brexit) and will also be later, if a deal seems possible – a long extension being one of the possibilities. The European Council meeting on the date of the Committee meeting will probably determine a new date for Brexit, but it could be 12 April.

It was noted that statutory instruments on financial services and notices on preparations for a hard Brexit have largely been completed, although an Act to give the Treasury power to adopt EU legislation after a no deal Brexit has been stalled in the Parliamentary process. The EU has issued some short term equivalence decisions.

It was noted that the UK's accession to the Hague Convention on Choice of Court (which applies to exclusive jurisdiction provisions) is dependent on the date on which the UK leaves the EU. It was also noted that the UK could be invited to join the Lugano Convention but this would need to be ratified by all other signatories, which could take some time.

Finally, it was noted that ISDA/Allen & Overy have produced a guide on enforcement of UK judgments in the EU 27 in the event of a no deal Brexit.

Afternote: UK membership of the EU has been extended to 31<sup>st</sup> October 2019. As a result of the Conservative leadership elections no progress has yet been made as to what will happen then.

## 10. **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.**