

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

Minutes of the meeting held on 9 October 2019

at the office of Slaughter & May, One Bunhill Row, London, EC1Y 8YY

Present: Dorothy Livingston (Herbert Smith Freehills LLP)
Penny Angell (Hogan Lovells LLP)
James Bresslaw (Simmons & Simmons LLP)
Charles Cochrane (Clifford Chance LLP)
Matthew Denning (Baker & McKenzie LLP)
Emma Giddings (Norton Rose Fulbright LLP)
Andrew McClean (Slaughter & May)
Flora McLean (Freshfields Bruckhaus Deringer LLP)
Simon Roberts (Allen & Overy LLP)
Sarah Smith (Dechert LLP)
Jeremy Stokeld (Linklaters LLP)
Nigel Ward (Ashurst LLP)
Presley Warner (Sullivan & Cromwell LLP)

Attending: Rachael MacKay (Herbert Smith Freehills LLP)

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

1.1 Apologies

The Chairman opened the meeting and reported that apologies had been received from David Ereira (Paul Hastings (Europe) LLP), Mark Evans (Travers Smith LLP) and Nick Swiss (Eversheds LLP).

1.2 Committee

The Chairman welcomed new member, Flora McLean, to her first Committee meeting.

1.3 Minutes of last meeting

The minutes of the last meeting, which had been circulated previously, were now approved.

2. SECURED TRANSACTION REFORM

2.1 CLLS Secured Transactions Law Reform/Code

Following the event held at Norton Rose Fulbright on 30 April 2019, a further revised discussion draft of the Code was circulated on 24 September 2019. The next meeting of the working group was due to be held on 6 November 2019.

2.2 European Commission Proposed Regulation on effects of assignment of claims on third parties

There were no new developments to report on this matter. The Committee would continue to keep a watching brief.

3. LIBOR – PLANNED END AT END OF 2021

The Committee's working party chairman (Charles Cochrane) reported on recent developments and key issues. As previously discussed, legacy contracts are particularly at risk of unexpected consequences. The Committee was informed that various consultations were being planned by the SONIA working group and these were expected to be published in December.

It was also noted that in September, the LMA had published exposure drafts of the LMA facility agreements for sterling and US dollars using compounded risk-free rate calculated on an arrears basis starting before the end of, and ending before the end of, an interest period. Comments had been invited from market participants.

4. **UK JURISDICTION TASKFORCE OF THE LAWTECH DELIVERY PANEL CONSULTATION REGARDING CRYPTOASSETS, DISTRIBUTED LEDGER TECHNOLOGY AND SMART CONTRACTS**

The Committee was reminded that a paper in response to the Lawtech Delivery Panel Taskforce (dated May 2019) had been prepared by Tolek Petch and had been supported (with amendments) and submitted by the Committee.

It was also reported that a draft paper had also been prepared by barristers under the auspices of Sir Geoffrey Vos, the Chancellor. This discusses the status of crypto assets under English law and should develop a largely helpful analysis. Tolek Petch and Dorothy Livingston had commented on the draft as experts. The publication of the final paper is awaited.

It was noted that much international co-operation would be needed in this area.

Afternote: The paper from the Law Tech Delivery Panel was published on 19 November 2019.

5. **ELECTRONIC SIGNATURES**

It was noted that the Law Commission's final report on Electronic Execution of Documents dated 4 September 2019 had been published and had made the following conclusions:

- electronic signatures are capable of being used to execute a document (including deeds);
- English law does not prescribe any particular form of signature;
- as regards witnessing execution of a deed, the current law requires physical presence of a witness.

The report also recommended the formation of an industry working group to establish practical and technical issues with electronic execution. It sees its summary of the law as overcoming issues of accessibility given the variety of legal considerations involved.

An addendum to the CLLS/Law Society paper on electronic signatures is being prepared, mainly to note that the Law Commission has addressed and dismissed the view that an electronic signature cannot be witnessed. The Commission's findings were generally in line with the paper's conclusions or more positive.

The recent case of *Neocleous v Rees* 2019 EWHC 2462 (Ch), in which an automatically generated email footer in a series of emails was sufficient to show an intention to authenticate or sign a document for the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, was also noted.

6. **BEIS CONSULTATION ON CORPORATE TRANSPARENCY AND REGISTER REFORM (COMPANIES HOUSE)**

The Committee as reminded that a Consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities had been issued in May and had closed on 5 August 2019. A joint response of this Committee and the CLLS Company Law Committee was submitted (31 July 2019).

The Committee would watch for further developments (although it was felt this matter was more relevant to Corporate Law colleagues).

7. **INTERMEDIATED SECURITIES – LAW COMMISSION REVIEW**

The Committee was reminded that the Law Commission has published a Call for Evidence (in August) which was a first step in a scoping study on intermediated securities. The Call for Evidence is open until 5 November.

It was noted that a well-resourced Joint Working Group with the Company Law Committee, chaired by Dorothy Livingston, had met and is preparing a draft response.

Afternote: Response submitted 8 November 2019, after the Regulatory Law Committee had also joined the joint working group.

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

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

9. **COMPETITION**

9.1 **New National Security Controls - Competition Law Committee's submission and cooperation with Company Law Committee**

New EU Law has come into force but will not apply until 11 October 2020. It may not impact on the UK, depending on the circumstances in which the UK ceases to be bound to apply EU law. The Regulation is mainly concerned with transactions affecting more than one Member State.

9.2 **Government response to consultation on new UK national security regime**

It was noted that the new interim UK national security regime is in force in relation to high tech and defence companies. These powers are being used: *Connect BidCo/Immarsat*, CMA Report delivered to Secretary of State on 17 September 2019 and *Advent/Cobham*, referred to CMA on 18 September 2019. The Government response to the consultation is awaited. It was also reported that various other countries are toughening their rules.

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

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

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

10.2 **EBA Consultation Paper: Draft Guidelines on loan origination and monitoring (EBA//CP/2019/04)**

It was reported that the EBA has been consulting on loan origination and monitoring (consultation paper dated 19 June 2019). It was noted that the LMA's response dated 27 September 2019 has been published.

11. **INSOLVENCY**

11.1 **Insolvency and Corporate Governance – Government Response to Consultation**

It was noted that R3 and the CLLS Insolvency Law Committee had sent letters to the Chancellor of the Exchequer (both dated 3 September 2019), regarding the latest proposals regarding changes to the preferential status for tax debts in corporate insolvencies and Brexit, in which they strongly urged a rethink of the proposals.

The Committee will keep a watching brief.

11.2 **EU adoption of Commission proposal for a Directive on preventive restructuring frameworks, second chance and measures etc**

There was nothing to report. The Committee would continue to keep a watching brief.

11.3 **Financial Collateral Arrangements Regulations**

There was nothing to report. Further developments are awaited.

12. **BREXIT**

The impact of Brexit was discussed. It was noted that in the Financial Sector, UK preparations for "no deal" (or end of transition without a new services regime applying between the EU and the UK) were well advanced and the Treasury was continuing to work on refining the law.

It was noted that Exit Day under The European Union (Withdrawal) Act 2018 and EU law is 31 October 2019. That said, a No Deal Brexit is still possible, although the "Benn Act" requires an extension to 31 January 2020 if current negotiations do not produce a deal by 19 October 2019. It is difficult to predict that there will be an extension.

Afternote: At the time of the meeting the situation was very uncertain. It is now clear from the results of the 12 December election that the UK is almost certain to leave to transition on 31 January 2020. A "no deal" Brexit is still a risk, but at the end of 2020, if no new trade arrangements come into force at the start of 2021. The UK Government intends to rule out extending transition beyond end 2020. This timetable means that there are unlikely to be any trading arrangements covering financial services. Some parallel equivalence decisions taking effect at end 2020 would perhaps be possible.

13. **ANY OTHER BUSINESS AND CLOSE**

13.1 **Any other business**

The case of *Lamesa Investments Limited v Cynergy Bank Limited* [2019] EWHC 1877 (Comm) which concerned the interpretation of a reference to foreign law (US sanctions) in an English law loan agreement, was noted.

13.2 **Close**

There being no further business the meeting was closed.