

CONSULTATION ON SECURED TRANSACTIONS CODE

In March 2020, the Financial Law Committee of the City of London Law Society issued a revised draft of the Secured Transactions Code. The following documents are now available on the CLLS website:

- the Secured Transactions Code (Discussion Draft March 2020);
- a Commentary on the Code (Discussion Draft March 2020); and
- a mark-up of the Code to show the changes from the previous version.

The purpose of the Code is to simplify and modernise the law of security in England and Wales. We have received a great deal of support for the idea of doing this and for the approach of the Code. We have had a lot of comments from a wide variety of interested people, including many academics and practicing lawyers. The comments have ranged from general discussions of the scope and structure of the Code to detailed comments on its terms. We also have an Advisory Group which consist of a broad range of interested people, whose comments have been invaluable.

We would like to mention in particular Paula Moffatt of Nottingham Law School, Magda Raczynska of UCL and Celia Gardiner of Dentons, who have done so much to promote the discussion of the Code over the last year. We are also very grateful to members of the Secured Transactions Law Reform Project for their involvement.

It seemed to us that the best way of testing a law reform proposal was to draft the proposed law and invite comments on it. This has worked very well in practice. We have gone through a number of iterations of the Code, each one refining the issues and the drafting in the light of the comments we have received.

Based on the discussions we have had with a wide-cross section of interested people, we believe that this latest draft of the Code has a broad consensus of support, but we would be grateful for further comments, particularly on the alternative proposals to deal with contractual restrictions on the creation of charges.

There are three other issues which we believe deserve further attention:

- whether there is merit in reforming the law concerning financial collateral;
- whether the Code should deal with conflict of laws issues; and

- how we should deal with the issue that under the current law certain liabilities are paid out of floating charge realisations before the secured creditor gets paid (there is a paper on this on the CLLS website dated 24/02/2014).

We will be discussing these issues over the coming months. Please send comments to Richard Calnan and Dorothy Livingston. Although they are happy to receive comments at any time, comments received by 30th June will be the subject of a review over the summer with a view to an update being published in the autumn.

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We look forward to hearing from you.

CLLS Financial Law Committee
Working Party on Secured Transactions Reform