

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

Minutes of the meeting held on 8 January 2020

**at the office of Herbert Smith Freehills LLP, Exchange House, Primrose Street, London,
EC2A 2EG**

Present: Dorothy Livingston (Herbert Smith Freehills)
Penny Angell (Hogan Lovells LLP)
Charles Cochrane (Clifford Chance LLP)
Matthew Denning (Baker & McKenzie LLP)
David Ereira (Paul Hastings (Europe) LLP)
Mark Evans (Travers Smith 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)
Nick Swiss (Eversheds LLP)
Nigel Ward (Ashurst LLP)
Presley Warner (Sullivan & Cromwell LLP)

Attending: Rachael MacKay (Herbert Smith Freehills LLP)
Edward Sparrow (Chairman, City of London Law Society)
David Hobart (Chief Executive, City of London Law Society)
Kevin Hart (City of London Law Society)

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

1.1 Apologies, Welcome and Retirement

The Chairman opened the meeting and reported that apologies had been received from James Bresslaw (Simmons & Simmons LLP).

Andrew McClean advised that he was retiring from Slaughter and May at the end of April and would resign his seat on the Committee with effect from that date. The Chairman confirmed that the Committee would advertise a vacancy through the CLLS website. She thanked Andrew for his very considerable contribution to the Committee and this was echoed by all present.

The Chairman welcomed representatives of the City of London Law Society, Edward Sparrow, David Hobart and Kevin Hart to the meeting. Edward Sparrow spoke to the Committee about the work of the CLLS and later joined in the discussion of the position on recognition of choice of court agreements and enforcement of judgements and on the Brexit issues.

1.2 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

The Committee was reminded that, following the meeting held on 6 November 2019, a further revised discussion draft of the Code had been circulated to the working party at the end of November. Discussions were ongoing.

The next working party meeting is due to take place at the end of January 2020.

2.2 **Rome I Article 14 and effects of assignment of claims on third parties**

There was nothing to report as regards the EC's proposed Regulation on the effects of assignment of claims on third parties.

However, it was noted that a recent case before the CJEU had determined that Rome I Article 14 must be interpreted as not designating, directly or by analogy, the applicable law concerning the third party effects of the assignment of a claim in the event of multiple assignments of the claim by the same creditor to successive assignees. (Case C 548/18: Request for a preliminary ruling under Article 267 TFEU from the Saarländisches Oberlandesgericht (Higher Regional Court of Saarland, Germany), made by decision of 8 August 2018, received at the Court on 23 August 2018, in the proceedings: *BGL BNP Paribas SA v TeamBank AG Nürnberg*.)

3. **LIBOR – PLANNED END AT END OF 2021**

The Committee's working party chairman (Charles Cochrane) reported on recent developments and consultations. It was noted in particular that measures were being taken by the UK Regulators for the market to move to "risk free" rates.

A consultation on legacy contracts being prepared by the SONIA working group, was awaited.

AFTERNOTE: THE BANK OF ENGLAND, FCA AND WORKING GROUP ON RISK FREE STERLING RATES ISSUED VARIOUS PRESS RELEASES AND PUBLICATIONS ON 16 JANUARY 2020. THIS INCLUDED A ROAD MAP AND A DOCUMENT BY THE RFRWG CALLED "USE CASES OF BENCHMARK RATES: COMPOUNDED IN ARREARS, TERM RATES AND FURTHER ALTERNATIVES"

4. **UK JURISDICTION TASKFORCE OF THE LAWTECH DELIVERY PANEL – CRYPTOASSETS**

It was noted that, following a public consultation on the status of cryptoassets and smart contracts under English law launched in May 2019, the UK Jurisdiction Taskforce had published a legal statement on 18 November 2019. The statement concludes that cryptoassets are to be treated as property under English law, even though they are virtual and cannot be things in possession or be possessed.

It was further noted that the statement is intended to provide answers to legal questions about the status of cryptoassets and smart contracts under English law and thereby promote market confidence, legal certainty and predictability which is hugely important to the global financial services industry.

The statement includes a short section on security – it states simply that security by mortgage or equitable charge can be created over cryptoassets in the same way as other intangible assets (but not pledges or liens as these are possessory security).

It was also noted that in December 2019, the Basel Committee on Banking Supervision had issued a Discussion Paper "Designing a Prudential Treatment for Cryptoassets". Comments are due by 13 March 2020.

5. **ELECTRONIC SIGNATURES**

There was nothing new to report on this matter. (The addendum to the CLLS/Law Society paper on electronic signatures is in progress, mainly to note that the Law Commission has addressed and dismissed the view that an electronic signature cannot be witnessed.)

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

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

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

The Committee was reminded that the Law Commission had published a Call for Evidence in August 2019, which was a first step in a scoping study on intermediated securities. The Committee had submitted a response prepared jointly with a working group of the CLLS Company Law Committee on 8 November 2019.

Since then, it was reported that Dorothy Livingston had been appointed to represent the CLLS on the Law Commission's advisory panel for their scoping study during 2020. The CLLS joint working party will comprise representatives of the Financial, Company, Regulatory and Insolvency Law CLLS Committees. The Law Commission's work will be led by Professor Sarah Green of Bristol University who is taking over as Commissioner for Commercial and Common Law.

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. **NEW NATIONAL SECURITY CONTROLS**

9.1 **EU**

It was noted that new EU law on national security controls has come into force but will not apply until 11 October 2020. The Regulation is mainly concerned with transactions affecting more than one Member State and therefore may be repealed once the UK's transition period of compliance with EU law comes to an end and not remain part of retained EU law.

9.2 **UK**

A new interim UK national security regime is in force in relation to high tech and defence companies. The Government's response to its 2019 consultation is awaited.

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

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

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

10.2 **EBA Consultation on loan origination and monitoring**

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

11. **INSOLVENCY**

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

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

11.3 **Financial Collateral Arrangements Regulations**

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

12. **BREXIT: EXIT DAY, SIS, JURISDICTION AND ENFORCEMENT OF FOREIGN JUDGMENTS**

It was now fairly certain that the UK will leave the European Union, to transition, at 11pm on 31 January 2020 (under The European Union (Withdrawal) Act 2018 and the EU/UK Withdrawal Agreement). The transition period is expected to end on 31 December 2020.

"No deal" Brexit is now highly improbable, but there is a real risk of effectively the same thing at the end of 2020 if no new trade deal is agreed with the EU. The fact that the new Government is ruling out an extension of transition means that any trade agreement coming into force at the beginning of 2021 will be confined to goods. On services, apart from separate arrangements on aviation, it is probable that some sort of parallel equivalent recognition is the best that can be hoped for. Any arrangement for mutual recognition of qualifications is unlikely in this timescale.

The Withdrawal Agreement provides that only cases pending at the end of transition will be dealt with under the recast Brussels Regulation on jurisdiction and judgments, which applies as between EU Member States (including the UK as a deemed Member State until the end of transition).

The Committee was reminded that the position on the Hague Convention on Choice of Court (exclusive jurisdiction clauses) is dependent on the date on which the UK ceases to be bound by EU law – now expected to be end December 2020. However, for pre-existing clauses submitting to the exclusive jurisdiction of the courts of a UK jurisdiction, note the change of status risk (and application of domestic law) and EU Commission guidance (April 2019).]

Afternote. The UK Government has published a Private International Law Bill – inter alia, this unequivocally adopts Hague with effect from end transition. The Ministry of Justice has also announced the UK's intention to apply to adhere to the Lugano Convention, If this application is accepted, it would place UK courts in the same position vis-à-vis courts of EU Member States and courts in Norway, Iceland and Switzerland as are the courts of those 3 countries. These three countries have declared their support for UK admission, but this depends on the agreement of the EU and Denmark, which is a separate signatory. The Lugano Convention is similar in effect to the Brussels Regulation before it was recast.

13. **ANY OTHER BUSINESS AND CLOSE**

There being no further business the meeting was closed.