

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

**Minutes of a meeting held at the office of Sullivan & Cromwell LLP, 1 New Fetter Lane,  
London EC4A 1AN**

**on 24 February 2016 at 1.00pm**

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Present: Dorothy Livingston (Herbert Smith Freehills LLP – Chairman)  
Penny Angell (Hogan Lovells LLP)  
Ken Baird (Freshfield Bruckhaus Deringer LLP)  
Richard Calnan (Norton Rose Fulbright LLP)  
Charles Cochrane (Clifford Chance LLP)  
John Davies (Simmons & Simmons LLP)  
Matthew Denning (Sidley Austin LLP)  
David Ereira (Paul Hastings (Europe) LLP)  
Mark Evans (Travers Smith LLP)  
Simon Roberts (Allen & Overy LLP)  
Nick Swiss (Eversheds LLP)  
Presley Warner (Sullivan & Cromwell LLP)  
Philip Wood (Allen & Overy LLP)

In attendance: Rachael MacKay (Herbert Smith Freehills LLP)

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

It was noted that the minutes of the last meeting which took place on 2 December 2015 had been circulated and were now approved.

Apologies were received from Sarah Smith (Akin Gump LLP), Nigel Ward (Ashurst LLP) and Andrew McClean (Slaughter & May).

The Chairman congratulated David Ereira on his award of an OBE and his new position at Paul Hastings. The Chairman also confirmed that Jeremy Stokeld of Linklaters LLP would join the Committee.

**2. SECURED TRANSACTION REFORM**

**2.1 Small Business, Enterprise and Employment Act ("SBEE Act") – proposed ban on non-assignment clauses in some business contracts regarding receivables**

Nothing to report.

**2.2 Secured Transactions Code**

Following the meeting of interested parties which had taken place on 4 January 2016, Richard Calnan planned to circulate a revised draft of the Code in due course.

**2.3 Bills of Sale**

The Committee was reminded that its response to the Law Commission's Consultation on Bills of Sale had been sent on 16 December, following which a meeting had taken place between representatives of the Law Commission, the Chairman and Richard Calnan. It was noted that the Commission's recommendations were expected to be issued in the summer.

**2.4 Financial Collateral Arrangements (No. 2) Regulations 2003 (FCARs)**

There was nothing to report since the Committee had submitted its letter (dated 25 November 2015) to supplement a memorandum requested by and sent to the Treasury by the Financial Markets Law Committee (**FMLC**), which explained various areas of legal uncertainty in relation to the FCARs.

2.5 **Releases of security (no payment of debt) and Companies House Forms MR04 and MR05**

Nothing to report.

3. **CSD REGULATION 2014 (ARTICLE 3(2))**

It was agreed that there was nothing further for the Committee to do on this matter for now, but that the Committee's concerns should be raised again when the Regulation is next reviewed by the EC. Therefore, the Committee should keep a watching brief on this matter until then.

4. **FINANCIAL STABILITY: ARTICLE 55 OF THE EU BANK RECOVERY AND RESOLUTION DIRECTIVE (BRRD) – CONTRACTUAL RECOGNITION OF BAIL-IN (D EREIRA/D LIVINGSTON)**

The Committee agreed that the contractual recognition of bail-in requirements under Article 55 of the BRRD were unnecessarily burdensome and were causing concern in the market.

It was agreed that David Ereira should arrange a working party meeting as soon as possible to discuss the Committee's next steps.

AFTER NOTE: THE LMA HAS WRITTEN TO THE EUROPEAN COMMISSION, THE PRA AND THE FCA (BY LETTERS DATED 25 AND 17 FEBRUARY 2016) PUTTING FORWARD THE CASE FOR A MORE PROPORTIONATE APPROACH TO CONTRACTUAL RECOGNITION OF BAIL-IN AND EXPLAINING THE DIFFICULTIES THAT EU FIRMS ARE EXPERIENCING.

5. **E-SIGNATURES**

It was noted that following circulation of the draft Guidance and Instructions to Counsel by the cross-firm joint working party considering the use of electronic signatures, it had been agreed that the Guidance should refer to the new EU Regulation on electronic signatures which will come into force on 1 July. A revised draft of the Guidance and Instructions were awaited.

AFTER NOTE: REVISED DRAFTS HAD BEEN CIRCULATED TO JWP MEMBERS FOR COMMENT ON FEBRUARY.

6. **SECURITISATION MARKET**

6.1 **Capital Markets Union**

Nothing to report. However the Committee would keep a watching brief on developments, as this would affect debt instruments in the future.

6.2 **EU proposal for a Regulation on Securitisation**

Nothing to report. The Committee would keep a watching brief on developments.

6.3 **Consultation on Covered Bonds in the EU**

It was noted that this consultation had closed on 6 January 2016 and that the Committee had not responded. The Committee would keep a watching brief on developments.

6.4 **EU Regulation 2015/365 on Transparency Securities Financing Transactions and of Reuse and Amending Regulation (EU) No 648/2012**

The Committee noted the FMLC letter dated 8 January 2016 regarding amendments which had been made to proposed Article 15 and title transfer financial collateral arrangements. The Committee would keep a watching brief on developments

7. **FCA WHOLESALE MARKET STUDY INTO INVESTMENT AND CORPORATE BANKING**

The Committee was reminded that the FCA had been expected to publish interim findings and any proposed remedies before the end of 2015, before issuing a final report in 2016. The Committee would keep a watching brief on developments.

8. **BREXIT (ALL)**

It was noted that the UK referendum on whether to continue its membership of the EU had been set for 23 June 2016.

9. **ANY OTHER BUSINESS AND CLOSE**

The following cases were noted:

- BNY Mellan Corporate Trustee Services v LBG Capital No 1 PLC leave to appeal to Supreme Court [2015] EWCA Civ 1257 - redemption of enhanced capital notes
- Canary Wharf Finance II PLC v Deutsche Trustee Co 28/1/2016 - spens payments.

**Nothing in these minutes should be considered as legal advice or relied upon as such.**