

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

**Minutes for the meeting held on 6 April 2022 at 12.45 pm at Freshfields Bruckhaus Deringer
LLP**

Present: Dorothy Livingston (Herbert Smith Freehills LLP) (Chair)
Edward Fife (Slaughter & May)
Craig Jones (Sullivan & Cromwell LLP) – in place of Presley Warner
Flora McLean (Freshfields Bruckhaus Deringer LLP)
Simon Roberts (Allen & Overy LLP)
Sarah Smith (Baker & McKenzie LLP)
Jeremy Stokeld (Linklaters LLP)
Nigel Ward (Ashurst LLP)

Attending: Rachael MacKay (Herbert Smith Freehills LLP) (Secretary)

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

1.1 Apologies for absence

The Chair opened the meeting and reported that apologies had been received from Charles Cochrane (Clifford Chance LLP), Nick Swiss (Eversheds LLP), Presley Warner (Sullivan & Cromwell LLP), Emma Giddings (Norton Rose Fulbright LLP), Mark Evans (Travers Smith LLP), Penny Angell (Hogan Lovells LLP), David Ereira (Paul Hastings (Europe) LLP) and James Bresslaw (Simmons & Simmons LLP).

1.2 Minutes of the last meeting

The minutes of the last meeting held on 12 January 2022 had previously been approved and were available on the CLLS website.

1.3 Additional attendees

The Chair welcomed Edward Fife to his first "in person" meeting and Craig Jones who was attending in Presley Warner's place.

1.4 Matters arising

The Chair informed the meeting that Matthew Dening had given notice to retire from the Committee. Whilst Matthew was not present at the meeting, the Chair thanked him for his valuable contribution to the Committee as a member and as Joint Deputy Chair.

The Chair would advertise the resulting vacancy on the Committee via the usual channels.

2. LIBOR END 31 DECEMBER 2021

In the absence of the working party chair (Charles Cochrane), there was nothing significant to report.

**3. COMPETITION: NATIONAL SECURITY AND INVESTMENT ACT 2021 OTHERWISE
STRICTLY CONFIDENTIAL**

The Chair reported that discussions with DBEIS regarding issues arising from the National Security and Investment Act 2021 were continuing.

Afternote: 17 May 2022: The DBEIS response relating to the status of the creation of an equitable charge in relation to the pre-clearance regime under the Act was published by the CLLS on the Committee page of its website.

4. ELECTRONIC SIGNATURES AND OTHER TECHNOLOGICAL DEVELOPMENTS

4.1 Electronic Signatures

Following publication of the final report of the Law Commission on the Electronic Execution of Documents (4 September 2019), a revised draft of the CLLS/Law Society 2016 paper on electronic signatures has been prepared by Nigel Ward earlier this year and had been commented on by the Committee. A further revised version had been prepared and circulated prior to the meeting. In accordance with the decision at the last meeting, the Chair would send this version to the Chairs of the other Committees involved to see if they wish to be associated with this revision.

Afternote: *The updated note has been sent to the Chair of the Law Society Working Group and the Chair of the CLLS Company Law Committee, who were joint issuers, with the Committee, of the original note. It has been well received and it is hoped that it can be published very shortly.*

4.2 Digital assets and electronic trade documents

It was noted that the Law Commission Summary on Electronic Trade Documents (ETD) had been published (16 March 2022). This included recommendations for a new statutory framework to recognise electronic trade documents as legally equivalent to paper trade documents and recommends various criteria for an electronic document to qualify as being capable of possession.

The Chair explained that there are some considerable concerns about the ETD draft legislation in that it may inadvertently extend to electronic versions of documents normally still available in paper form (eg global bearer bonds). A meeting with the Law Commission to discuss these concerns had been requested and discussions were also taking place with the joint working party of the CLLS Company and Regulatory Law Committees, though these concerns were focused on debt instruments.

There are also significant difficulties in assessing this legislation from the perspective of lenders, so long as the English law solution to the conflict of law issues is known. The choice to regard digital forms of ETDs as possessory seems to mean that the laws relating to goods will apply to them. This would raise issues about the ability of English companies to give security over them, because any security must comply not only with any relevant UK formalities (eg registration at Companies Registry) but also with those of the jurisdiction in which the asset is located. There is no certainty where that would be, particularly for digital documents held in DLT systems, where there are considerable difficulties in identifying location of such assets and no relevant case law in the UK or elsewhere.

It was also noted that the Law Commission Consultation Paper on digital assets is expected to be published in mid-2022. The Law Commission was also expected to start a project in mid-2022 looking at the rules relating to conflict of laws as they apply to emerging technology, including smart legal contracts and digital assets.

Afternote: *Mark Evans and the Chair have continued a dialogue with the Law Commission and it is hoped that when the Bill is brought forward for enactment the concerns on scope will have been addressed. The resolution of the conflicts issue is expected to come from the separate project on conflict of laws referred to above.*

5. ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) ACT 2022 – REGISTER OF OVERSEAS ENTITIES WHICH OWN UK PROPERTY

In relation to overseas entities, it was noted that the Economic Crime (Transparency and Enforcement) Act 2022 had been passed on 15 March 2022, but relevant aspects had not yet commenced.

It was also noted that Part 1 of the Act substantively incorporates the draft Registration of Overseas Entities Bill which had been published by DBEIS in 2018. (This Committee had endorsed comments made by the LMA on the 2018 Bill.)

The Act requires overseas entities which own UK land (acquired on or after 1 January 1999) or who acquire UK land, to be entered on a new public register at Companies House, and for those entities to identify their registrable beneficial owners (or state that they have none). The beneficial owner information is broadly like the PSC (people with significant control) regime under the Companies Act 2006. There is also an annual updating requirement. There is no carve-out for pre-existing security.

Failure to comply with the new requirements (when in force) will affect the ability to register transfers of and charges over UK property at HM Land Registry. Failure to comply will also be a criminal offence for the relevant overseas entity and its officers.

It was thought that documentation and due diligence processes would need to be updated to reflect the new requirements once more details about the operation of the new system were known.

6. **COMPANY LAW – REFORM OF COMPANIES HOUSE**

It was noted that a white paper on the reform of Companies House had recently been published. Under the reforms Companies House is to be given greater powers in relation to information on the register, identity verification checks to be introduced for all new and existing directors and corporate directors will be banned.

7. **ESG**

In the absence of Emma Giddings, there was nothing to report on this.

8. **RING-FENCING AND PROPRIETARY TRADING INDEPENDENT TRADING REVIEW FINAL REPORT**

It was noted that HM Treasury had published its Final Report on 15 March 2022. The Panel had concluded that the ring-fencing regime is worth retaining but needs to be more adaptable to better serve customers and future risks.

The accompanying statement said: "The recommendations focus on providing authorities with more flexibility in applying the ring-fencing regime, while also proposing options to better align ring-fencing with the resolution regime. This recognises that resolution is overtaking ring-fencing in providing a more comprehensive solution for tackling too-big-to-fail."

The FMLC is drawing the attention of the HM Treasury team to its report on legal issues of uncertainty, in the hope that they will resolve these as part of the simplification exercise that has been recommended.

9. **BREXIT**

There was nothing to report on this.

10. **NEXT MEETING**

The next meeting is due be held on 13 July 2022 by Teams.

11. **ANY OTHER BUSINESS AND CLOSE**

It was noted that loan documentation may soon need to be expanded to address issues related to lenders affected by sanctions regimes, as well as sanctioned borrowers.