

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

Minutes for the meeting to be held at 12.45pm on 13 July 2022 by Teams

Present: Dorothy Livingston (Herbert Smith Freehills LLP) (Chair)
James Bresslaw (Simmons & Simmons LLP)
Charles Cochrane (Clifford Chance LLP)
Matthew Cottis (Hogan Lovells LLP) – in place of Penny Angell
Mark Evans (Travers Smith LLP)
Emma Giddings (Norton Rose Fulbright LLP)
Sarah Smith (Baker & McKenzie LLP)
Nigel Ward (Ashurst LLP)

Attending: Emily Barry (Herbert Smith Freehills LLP) (Secretary) – in place of Rachael MacKay

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 Penny Angell (Hogan Lovells LLP), David Ereira (Paul Hastings (Europe) LLP), Nick Swiss (Eversheds LLP), Jeremy Stokeld (Linklaters LLP), Presley Warner (Sullivan & Cromwell LLP) Edward Fife (Slaughter & May), Simon Roberts (Allen & Overy LLP), Flora McLean (Freshfields Bruckhaus Deringer LLP) and Rachael MacKay (Herbert Smith Freehills LLP).

1.2 Minutes of the last meeting

The minutes of the last meeting held on 6 April 2022 have been previously circulated and were approved.

1.3 Additional attendees

The Chair welcomed Matthew Cottis who was attending in Penny Angell's place and Emily Barry who was attending in Rachael MacKay's place.

2. LIBOR END 31 DECEMBER 2021 AND RFR TRANSITION

The CLLS Working Party Chair gave an update: since publication of most LIBOR settings ceased on 31 December 2021, transition to the use of near risk-free rates seems to have been relatively smooth. Since 31 December 2021, the FCA has compelled the IBA as administrator of LIBOR to publish 1, 3 and 6 month sterling and yen LIBOR on a synthetic, and non-representative, basis for periods of 12 months and a maximum period of 10 years, to allow legacy contracts to run off. Five USD LIBOR settings remain representative until 30 June 2023, also for use in legacy contracts.

On 30 June, the FCA launched a consultation relating to the cessation of 1 and 6 month synthetic sterling LIBOR at the end of March 2023, and 3 month sterling LIBOR after that. The consultation also seeks views on whether a synthetic USD LIBOR will be required for non-US law contracts at all (given the availability of a legislative solution for US law governed contracts), against a background of regulatory pressure to continue active transition of USD LIBOR contracts ahead of the June 2023 deadline.

The Committee discussed the fact that there will remain some long term loans, particularly PFI loans, which will remain unamended at the end of March 2023, and these will need to be considered when the timeline for discontinuing sterling synthetic LIBOR is settled. On the USD side, the most likely need for synthetic LIBOR is in the bond market, where some USD LIBOR-referencing bonds are likely to remain and the same issues with consent to

amend the interest rate apply to these as to sterling LIBOR referencing bonds. However, it is important that the market appreciates that any synthetic LIBOR will be available for only a limited period.

3. **COMPETITION: NATIONAL SECURITY AND INVESTMENT ACT 2021**

The Chair reported that discussions with DBEIS regarding issues arising from the National Security and Investment Act 2021 continue. These are being conducted by a joint working group chaired by the Chair and including the Chairs of the Insolvency, Regulatory and Company Law Committees and representatives of all 4 Committees.

Following the helpful response from DBEIS in relation to the creation of equitable security over shares, which has been published on the CLLS website, the main concerns relate to:

- automatic acquisition of voting rights by lenders (in security and joint venture agreements); and
- the general suitability of the regime as it applies to enforcement of security over share stakes in excess of 25% in relevant businesses.

The working group has had several discussions with DBEIS on these issues, and DBEIS is now considering them.

Afternote: DBEIS has published guidance, which has been updated following submissions from the working group about confusing terminology in the section on secured lending, which was likely to result in filings being missed. No further developments are expected until the new Prime Minister and Cabinet are in place.

4. **ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) ACT 2022 – PART 1 – REGISTER OF OVERSEAS ENTITIES WHICH OWN UK PROPERTY**

The Chair reported that the Economic Crime (Transparency and Enforcement) Act 2022, which was passed on 15 March 2022 but not yet commenced, is likely to have an impact on the real estate finance market, in particular. The LMA is aware of the issues raised by it from a documentation perspective, and it is expected that some documentary changes will be adopted in the market.

The requirement for verification of information in relation to an overseas entity in order for it to apply to be registered, and to provide its annual updates, was discussed. Some aspects of the information to be verified will be governed by foreign law, and therefore will require local advice in the relevant jurisdiction.

The Committee discussed that the Act was expected to commence soon, and that a date of 1 August 2022 had been mentioned by the Government as their intended date.

Afternote: this legislation did come into effect on 1st August. The Law Society is taking the lead on issues related to solicitors in relation to verification.

5. **ELECTRONIC SIGNATURES AND OTHER TECHNICAL DEVELOPMENTS**

5.1 **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 was prepared by Nigel Ward earlier this year. This was commented on by the Committee and a further revised version prepared.

As agreed, the Chair sent the updated note to the Chairs of the Law Society Working Party and CLLS Company Law Committee, following which further a clarificatory revision was being made to the paper, prior to it being published on the CLLS website. The paper had been sent to the Law Society Committee, the Chair of which had welcomed it but had not formally responded yet.

Afternote: The Law Society Company Law Committee has provided some helpful comments and the paper will be published as soon as a remaining point is resolved with a member of the CLLS Company Law Committee.

5.2 **Digital assets and electronic trade documents**

There was nothing to report on this topic.

Afternote: The UK Judicial Taskforce has published a consultation relation to Distributed Ledger Technology systems and securities – responses by 23 September – and the Law Commission a wide-ranging paper with proposals for legal recognition of a new form of property. This paper runs to over 500 pages and responses are requested by early November. The Chair is reconstituting the CLLS Cross-Party working party on this topic to prepare responses.

6. **SECURITY: MOVEABLE TRANSACTIONS (SCOTLAND) BILL**

Mark Evans reported that though the Bill is to be welcomed for modernising Scottish security laws, there are some outstanding issues in relation to dematerialised securities, which have been raised with the Scottish Government by Scottish lawyers and by some clearing houses.

The Chair further reported that conflicts of laws issues also need to be fully addressed, in particular to deal with assets that move around the UK such as rolling stock and construction plant. This will be particularly important for its use in trade finance, a fundamental characteristic of which is that it is cross-border.

Further secondary legislation is expected, which, it is believed, will address some of these issues.

7. **ESG**

Emma Giddings reported that there will be a cross-committee ESG working group, and suggested that any member of the Committee with a particular interest in ESG contact her so that a sub-working group can be set up.

8. **EU DIRECTIVE ON NON-PERFORMING LOANS**

Nothing of significance to report.

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

Nothing new to report since HM Treasury published Final Report 15 March 2022.

10. **BREXIT**

The Chair reported that EU Member States have not voted on the proposal that the UK join the Lugano Convention to date.

The EU has announced it intends to ratify the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters on behalf of all Member States, and the UK is also considering the 2019 Hague Convention. This may be helpful for commercial contractual disputes, but individual EEA citizens and UK citizens will have less easy access to remedies in their home state than would be the case if Lugano applied. This is very unfortunate and in effect will deny them justice.

The EU is also considering joining the Singapore Convention on mediation, which would give certain mediated settlements similar status to a final judgment.

11. **NEXT MEETING**

The next meeting is due be held on 12 October at the offices of Linklaters LLP.

12. **ANY OTHER BUSINESS AND CLOSE**

Charles Cochrane raised the recent judgment in *Re Fore Fitness Investments Holdings Ltd, Hashmi v Lorimer-Wing* [2022] EWHC 191, which discussed the application of the Model Articles to sole director companies.