

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

**Minutes for the meeting held on 11 January 2023 at Eversheds LLP, 1 Wood Street, London,
EC2V 7WS also by Teams**

Present: Dorothy Livingston (Herbert Smith Freehills LLP) (Chair) – in person
James Bresslaw (Simmons & Simmons LLP) - in person
Charles Cochrane (Clifford Chance LLP) – in person
Matthew Cottis (Hogan Lovells LLP) – by Teams
David Ereira (Paul Hastings (Europe) LLP)– in person
Mark Evans (Travers Smith LLP) – by Teams
Edward Fife (Slaughter and May) – in person
Emma Giddings (Norton Rose Fulbright LLP) – in person
Flora McLean (Freshfields Bruckhaus Deringer LLP) – by Teams
Simon Roberts (Allen Overy LLP) – in person
Sarah Smith (Baker & McKenzie LLP) – in person
Jeremy Stokeld (Linklaters LLP) – by Teams
Nick Swiss (Eversheds LLP) – in person
Nigel Ward (Ashurst LLP) – in person
Presley Warner (Sullivan & Cromwell LLP) – in person

In attendance: Rachael MacKay (Herbert Smith Freehills LLP) (Secretary) – in person

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)

1.2 Minutes of the last meeting

The minutes of the last meeting held on 12 October 2022 have been previously circulated and were approved and are now on the website.

1.3 Retirement of Dorothy Livingston as Chair and member of the Committee

The Chair announced that, since she was retiring from private practice in the near future, it was her intention to resign as chair, and as a member of, the Committee with effect from the end of April. She would begin the process of finding a successor in the next few weeks.

Following this announcement, David Ereira proposed that the minutes note the Committee's deep and heartfelt appreciation for Dorothy's years of service on the Committee, both as a member and as Chair, a post she has held for 25 years. The other members of the Committee unanimously endorsed this proposal, noting that under Dorothy's leadership the Committee made significant and lasting contributions to the legal system and the profession. The Committee noted that during her tenure, Dorothy was not so much the Committee's Chair – though she was certainly all of that – but rather the driving force behind the Committee's success, through her enthusiasm, legal acumen and razor-sharp mind.

The Committee wished Dorothy all the very best for her well-deserved retirement.

Afternote: We expect to have three vacancies at the end of April for new members of the Committee and these have been advertised by the CLLS in time for them to be appointed at the next meeting.

1.4 **New CLLS Committees**

It was reported that two new CLLS Committees had recently been formed: the Arbitration Committee (headed by Michael Davidson (Hogan Lovells LLP) and the ESG Committee (headed by Roger Leese (Clifford Chance LLP)).

2. **LIBOR CESSATION AND RISK FREE RATE TRANSITION**

It was reported that on 23 November 2022, the FCA had announced that ICE Benchmark Administration was being required to continue to publish 3-month sterling LIBOR until the end of March 2024. In addition, the FCA had proposed that synthetic US dollar LIBOR settings would cease at the end of September 2024.

In addition, the FCA final LIBOR transition key dates were noted as follows:

- 31/12/22: the 3 synthetic JPY LIBOR settings
- 31/03/23: 1 and 6 month synthetic GBP LIBOR settings
- 30/06/23: overnight and 12 month USD LIBOR settings
- 31/03/24 (planned): 3 month synthetic GBP LIBOR setting
- 30/09/24 (proposed): 1, 3 and 6 month synthetic USD LIBOR settings

Concern was expressed about the slower transition of the USD LIBOR markets and, in particular, developing markets.

3. **NATIONAL SECURITY AND INVESTMENT ACT 2021 (NS&I ACT 2022)**

It was reported that the Committee's efforts to clarify and change aspects of the NS&I Act 2022 which relate to enforcement of security and insolvency processes had been held up by the changes in Government in the latter half of 2022 and had not progressed.

The Chair and relevant members of the Committee would try to restart the process, but the chances of change or simplification currently appeared to be more distant than had previously been the case.

Afternote: Ultimate responsibility for this legislation has been passed to the Cabinet Office Minister, but administration appears to remain in DBEIS.

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

The Committee was reminded that the Economic Crime (Transparency and Enforcement) Act 2022 (**ECTEA**) had commenced on 1 August 2022, with the land registry aspects coming into force on 5 September 2022. The ECTEA imposes new requirements on overseas entities (**OEs**) which own, acquire or sell an interest in UK land to be registered at Companies House (and comply with an annual updating requirement).

Since the last meeting, it was noted that the LMA had published a guidance note (28 November 2022) which included drafting for a new condition precedent and a new form of undertaking to address the ECTEA, but which emphasised the view that a specific undertaking was not necessary as this was already covered by existing undertakings in LMA facility agreements (compliance with laws and authorisations).

There was some discussion about the exemption in paragraph 22 of Schedule 2 Part 5 of the ECTEA (*Rights attached to shares held by way of security*) when identifying the "registrable beneficial owner" of an OE in circumstances where a lender or security agent has taken security over the shares in the OE and (due to local law requirements) may be registered on its register of members in order to create effective security.

It was also noted that the six month transitional period for current OEs to register would expire on 31 January 2023.

5. ELECTRONIC SIGNATURES AND OTHER TECHNICAL DEVELOPMENTS

5.1 Electronic Signatures

The updated version of the CLLS/Law Society paper on electronic signatures (originally issued in 2016) had been finalised on 2 October 2022 and was now available on the Financial Law and Company Law Committee pages of the CLLS website.

It was also noted that the Government Sponsored Industry Working Group on Electronic Execution of Documents had held a consultation (now closed) on self-certification of digital signature methodology providers, following which an interim report had been issued in February 2022. The final report is awaited. The Committee would keep a watching brief.

Afternote: Final report published on 14 March 2023:

<https://www.gov.uk/government/publications/industry-working-group-on-esignatures-final-report>

5.2 Digital assets

The Committee noted the following:

- A response to the Law Commission Consultation Paper (no 256) on Digital assets (published 28 July 2022) had been submitted on 4 November 2022 and was available on the CLLS website.

It was noted that the FMLC response (November 2022) aligned in some respects with the views of the CLLS and that in other respects there was some difference of views.

Afternote: UNIDROIT published a draft consultation: Principles on Digital Assets and Private Law (10 January 2023). The working group decided not to put in a formal response, having endorsed the proposals in its comments on the Electronic Trade Documents Bill.

- A joint response (of the Finance, Company and Regulatory and Insolvency CLLS Committees, with Mark Evans leading) to the UK Judicial Taskforce (**UKJT**) consultation (dated 1 August 2022): The issuance and transfer of digital securities under English private law, had been submitted on 15 November 2022 and was available on the Committee's page of the CLLS website.

The Committee was reminded that the UKJT's intended outcome of the consultation was the publication of a legal statement on digital securities under English law.

Afternote: UKJT's second legal statement was published in February 2023.

- Following introduction of the Electronic Trade Documents Bill to Parliament on 12 October 2022, a call for evidence was published by the Special Public Bill Committee on 16 December 2022. The Committee's response had been submitted on 10 January 2023 and was available on the Committee's page of the CLLS website.

Afternote: The Chairman gave evidence to the Special Committee of the House of Lords and proposed changes to address an important lacuna in the Bill which leaves legal uncertainty as to how the effect of English law rules related to the location of possessory items will be addressed in relation to electronic trade documents. The Special Committee decided to leave this to be dealt with in the next phase of the Law Commission's work which will look at Digital Assets and Private International Law and report in 2024. The Bill has returned to the Commons in substantially unchanged form and seems likely to be passed in the current Parliamentary session.

6. SECURITY: MOVEABLE TRANSACTIONS (SCOTLAND) BILL

There was nothing new to report on this Scottish Bill.

7. **ESG**

As referred to at the start of the meeting, the new ESG CLLS Committee had now been set up and Emma Giddings of this Committee is a member.

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

The Committee was reminded that HM Treasury had published the final report of an independent review on 15 March 2022 in which a series of recommendations had been made aimed at reducing the rigidity of the ring-fencing regime and addressing unintended consequences which had been identified.

It was also reported that the Edinburgh Reforms announced by the Government (on 9 December 2022) proposed various measures to diminish the burdens of ring-fencing and that a consultation on a series of near-term reforms was planned for mid-2023. In addition, it was reported that the Government intends to issue a public call for evidence in the first quarter of 2023 to review the practicalities of aligning the ring-fencing and resolution regimes.

Afternote: Sir John Vickers, the author of the concept of ring fencing, has been vigorously defending the retention of strict ring-fencing rules following the recent failures of several US Banks and the takeover of Credit Swiss and it is possible that these developments will slow or limit the reform process, including the adoption of the technical clarifications proposed by the FMLC last year. In March the Government published a call for evidence on aligning the ring-fencing and resolution regimes.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139577/OMS_FINAL_DRAFT_Aligning_the_ring-fencing_and_resolution_regimes_call_for_evidence__EST_signed_.pdf

9. **BREXIT**

The Committee was reminded that the Retained EU Law (Revocation and Reform) Bill had been published (22 September 2022) which aimed to end the supremacy of EU retained law and make it easier to amend EU retained law.

It was noted that this could lead to loss of the retained Rome 1 and Rome 2 Regulations and the EIDAS Regulation on electronic signatures without replacement as soon as the end of 2023, both of which would be very unfortunate. Whilst the Bill was at an early stage and may yet be affected by changes in Government policy, the cross-Committee working group would consider if representations should be made to relevant Government departments and HM Treasury.

There was nothing new to report on private international law aspects of Brexit.

Afternote: The Law Society and City UK have made representations to the Department of Justice regarding the retention of the Rome I and II Regulations, noting that the UK was never compelled to adopt these Regulations as the EU Treaties gave it a right of opt out. It had exercised that right with regard to Rome I and only joined when satisfied with the changes made to the Regulation. The views of the new Minister may be important.

The split of the Department of Communications, Media and Sport has delayed dealing with the eIDAS Regulation.

The Bill is now in the Report Stage in the House of Lords and there appear to be many amendments outstanding. It remains to be seen whether there will be negotiated changes, acceptance of the Bill by the Lords in substantially its current form or a "ping-pong" Parliamentary process.

10. **NEXT MEETING DATES**

The meeting dates for the remainder of 2023 are being arranged.

11. **ANY OTHER BUSINESS AND CLOSE**

There being no further business, the meeting closed.