



c/o Bank of England
Threadneedle Street
London
EC2R 8AH

Fax: (+44) (0)20 7601 3918

Email: fmlc@bankofengland.co.uk

Website: www.fmlc.org

8 June 2007

CHAIRMAN:
THE RT.HON. THE LORD WOOLF

European Commission
Directorate-General for Justice, Freedom and Security
Unit C1 – Civil Justice
B-1049
Brussels
Belgium

Dear Sirs

**Green Paper on Improving the Efficiency of the Enforcement of Judgments in the EU:
the Attachment of Bank Accounts – COM(2006) 618 Final (the “Green Paper”)**

The role of the Financial Markets Law Committee (“FMLC”) is to identify issues of legal uncertainty, or misunderstanding, present and future, in the framework of the wholesale financial markets which might give rise to material risks and to consider how such issues should be addressed.

The FMLC read with interest the Commission’s proposals on improving the efficiency of the enforcement of judgments in the Community as contained in the Green Paper. The FMLC has also had the opportunity of reviewing Clifford Chance LLP’s (“Clifford Chance”) response to the Green Paper dated 29 March 2007 (the “Clifford Chance Letter”). The purpose of this letter is to endorse the position set out in the Clifford Chance Letter and to reiterate some of the issues raised therein to the extent that these matters relate to legal uncertainty arising in the wholesale financial markets.

As a general comment, the FMLC shares Clifford Chance’s view that there is no evidence of a need to create a Community instrument in this area. Further, the Commission should undertake a detailed impact and economic assessment before further considering legislation. Any proposal to create a European-wide regime for the attachment of bank accounts or to harmonise the laws of Member States should be based on real evidence that such a proposal would ameliorate cross-border debt collection and that it would not create further uncertainty and costs. From the FMLC’s perspective, it would be detrimental to the financial markets for legislation to be introduced which will inevitably increase costs, administrative burdens and the number of claims banks must deal with without evidence that this is, in fact necessary.

The FMLC also agrees with Clifford Chance that any change in this area, if indeed necessary, could be effected through modification of Council Regulation 44/2001 (“Brussels I”) (to allow for the mutual recognition of *ex parte* orders). Since the Commission is due to undertake a review of Brussels I in the next twelve months such amendment could be effected via that process. However, as noted above, any change in this area should not be introduced without detailed consideration and consultation and thus, the upcoming review of Brussels I may, in fact, be too early to effect any such proposal.

As noted in the Clifford Chance Letter, there are a number of unattractive consequences which any legislation would have in the context of the financial markets (especially for third party account holding banks receiving these orders). Despite the proposed aim of the Green Paper to reduce obstacles in the internal market, creditors would still need to obtain local law advice in order to ascertain the effect of any order and the means by which it could be enforced against the relevant account.

Further, the Green Paper does not deal with the interrelationship between national remedies and the European regime. The proposals potentially allow for multiple concurrent proceedings to take place. For example, a creditor may be able to apply for an attachment order in its domestic court under national law rules. It could also apply for a European-style order at its national court. Meanwhile, that European-style order could be under review in the courts where the bank account is located. This creates unnecessary costs and legal uncertainty should any of these proceedings result in inconsistent judgments. This situation is also clearly at odds with the aims behind the Green Paper and Brussels I.

Of particular concern to the FMLC, is the potential effect that the proposals may have on the law of set-off and priority. The FMLC believes that should legislation be introduced in this area, set-off rights and issues of priority should be left outside of the proposed regime or, at least, should not be prejudiced by the regime.

The FMLC is also keen to emphasise that there are a variety of ways in which funds are held within modern banking systems and that there are a variety of assets (i.e., not just money) held in the accounts in the money and capital markets. Any order should make it clear what assets are being attached and what types of accounts are affected. The FMLC agrees with Clifford Chance that only bank accounts where the debtor has an immediate right to call for payment should be included within the regime. For example, securities accounts should not be included within the proposals since it would be difficult to ascertain the value of the assets held in the account (since the value of the underlying securities fluctuates daily). Similarly, clearing accounts should not be subject to attachment. Lastly, where a bank has paid away sums before freezing the relevant account it should not be expected to reclaim the funds given the speed of transfers in the financial markets and the paralysing effect any such required "claw back" would have on the money markets.

In conclusion, the FMLC is highly supportive of the position taken in the Clifford Chance Letter and would also be happy to meet with the Commission to discuss this issue further.

Yours sincerely

A handwritten signature in black ink, appearing to read "Lord Woolf", with a horizontal line underneath.

Lord Woolf

Cc. Habib Motani, Simon James and Helen Carty, Clifford Chance LLP
Liz Chapman, HM Treasury