



Financial Markets Law Committee (“FMLC”)

Note for Record of Committee Meeting

Date: 7 December 2017

Time: 4:30PM-6:00PM

Location: Linklaters LLP, One Silk Street, London, EC2Y 2HQ

Copies to: FMLC Members, Joanna Perkins

In attendance

Lord Thomas (Chairman)

Oliver Moullin

David Greenwald (Deputy Chairman)

Jan Putnis

Paul Double

Barney Reynolds

Simon Firth

Sanjev Warna-kula-suriya

Kate Gibbons

Joanna Perkins (Chief Executive Officer (“CEO”))

Carolyn Jackson

Venessa Parekh (Research Manager)

Mark Kalderon

Juliana Franco (Legal Analyst)

Jon May

Thomas Willett (Forum Coordinator)

Chairman’s Comments

Lord Thomas opened the meeting and welcomed attending Members. He remarked that, with the appointment of Antony Zacaroli to the High Court, the Committee was keen to appoint a Member of the Bar to comply with the constitutional requirements lodged with the Charity Commission. Members were asked to let the CEO know if they were able to recommend any barristers.

Publication of Committee Meeting Minutes

The CEO provided an overview of the Secretariat’s proposal to publish on the FMLC website minutes of Committee meetings. The following protocol will apply to Committee meeting minutes: (i) minutes do not record dissent or points of wider discussion, only resolutions and agreed next steps; (ii) *ad hoc* comments or observations are not attributed; and (iii) Members may, if they think appropriate, ask that certain discussions are held under the Chatham House rule. Following every meeting, the FMLC Secretariat will circulate draft minutes for Members’ review, comments and approval. It was agreed that only a single set of minutes should be maintained and published so as to achieve complete transparency.

Registered Charity Number: 1164902.

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ACTIVE ISSUES

Issue 218: General Data Protection Regulation (Chair—TBC)

At the last Committee meeting, on 5 October 2017, Members agreed that work be undertaken on the [General Data Protection Regulation](#) (the “GDPR”), which will come into effect on 25 May 2018. The Secretariat has prepared a briefing note summarising its preliminary research and is convening a Working Group. It was suggested by the CEO that the Working Group participant from Katten Muchin Rosenman LLP be asked if he might like to chair the Working Group. The suggestion met with general approval.

Issue 214: Business Contract Terms (Assignment of Receivables) Regulations

Members noted the publication of a [letter](#) to the Department of Business, Energy and Industrial Strategy on the Business Contract Terms (Assignment of Receivables) Regulations.

The CEO reported that representatives of the Secretariat had been invited to attend meetings of a Working Group on the Regulations established by the City of London Law Society (“CLLS”), following the publication of the letter. Members discussed the various complexities identified by the FMLC, on the one hand, and the CLLS in the draft Business Contract Terms (Assignment of Receivables) Regulations.

One Member noted that the situation highlighted the importance of Government consultation with stakeholders in the drafting and review of regulations, and observed that such consultation might benefit from the collective contribution of participants in the City of London with legal expertise. The Chairman queried whether the FMLC should consider further and in depth how best to assist HM Government with important consultations, a question to which the Committee later returned in the context of the Withdrawal Bill.

Issue 210: Scope of WTO Rules (Co-chairs—Chris Newby and Stephen Powell)

This Working Group was convened to consider uncertainties relating to the conduct of cross-border business in the event of a so-called “hard Brexit” under the rules established at the World Trade Organisation (“WTO”). A completed draft of the Working Group’s paper was circulated

among Members for their comments and approval. The paper examines the WTO principles applicable to the financial services and considers their impact: (1) should the U.K. be unable to agree a future treaty with the E.U.; (2) on transitional arrangements; and (3) on a future FTA.

Members approved publication of the draft paper.

Issue 204: Establishment of an E.U. Insurer in another Member State (Chair—David Kendall)

The Working Group had prepared a draft position paper, which is longer than was anticipated by the original allocation of drafting responsibilities and addressed to the Committee rather than drafted on behalf of the Committee.

The Secretariat had discussed with the Working Group whether, in the interest of producing a document which is practicable for FMLC Members to review and adopt, the paper could be shortened. The Working Group indicated instead a preference for having the paper published elsewhere but raised the question with the Secretariat of publishing on the FMLC website an abstract of the paper with a link to the external publication. Members were unanimously of the view that they would prefer not to publish on the FMLC website an abstract or a link to the paper without having reviewed it. Members agreed, however, that another attempt be made to discuss with the Working Group whether it might be possible to shorten the paper for publication by the FMLC.

It was also recommended that guidance on a suitable page count be communicated to all Working Groups in the future.

Issue 203: Brexit—Governing Law and Jurisdiction (Chair—Trevor Hartley)

Members noted the publication of a [letter](#) to the Ministry of Justice on 23 November 2017.

Issue 177: Benchmark Reform

Members noted the publication of a [letter](#) to the Bank of England on 9 October 2017.

Issue 163: MiFID II / MiFIR (Chair—Mark Calderon)

Members noted the publication of a [letter](#) to ESMA.

SCOPING AND RADAR

The CEO encouraged Members to recommend via email topics for discussion at Scoping Forum meetings.

Brexit High Level Advisory Group (“HLAG”)

The HLAG will meet on 8 December 2017.

The CEO confirmed that no response had been received yet from the Ministry of Justice to the FMLC’s recent letter on cross-border civil judicial cooperation.

A discussion ensued as to how the FMLC might participate further in Brexit deliberations, given its educational and explanatory function, perhaps by means of providing evidence before House Committees. Members weighed the pros and cons of this approach in light of the FMLC’s educational remit. It was agreed that they would return to this discussion in January.

Finance and Technology (“FinTech”) Scoping Forum

It was recommended that an update on the draft paper on DLT be provided at the next meeting of the FinTech Scoping Forum.