



**Financial Markets Law Committee (“FMLC”)
Sovereign Debt Scoping Forum**

Date: Tuesday 5 June 2018

Time: 8.30am to 9.45am

Location: Freshfields Bruckhaus Deringer, 65 Fleet St, London EC4Y 1HT

In Attendance:

Duncan Kellaway (Chair)	Freshfields Bruckhaus Deringer
Ian Clark	White & Case LLP
Emma Dickinson	Deutsche Bank AG
Francis Fitzherbert-Brockholes	White & Case LLP
Leland Goss	International Capital Market Association (“ICMA”)
Robert Gray	ICMA
Yannis Manuelides	Allen & Overy LLP
Rodrigo Olivares-Caminal	Queen Mary University of London
Tolek Petch	Slaughter and May
Andrew Shutter	Cleary Gottlieb Steen & Hamilton LLP
Harriet Territt	Jones Day
Venessa Parekh	FMLC
Thomas Willett	FMLC

Regrets:

Emilios Avgouleas	University of Edinburgh
Ranajoy Basu	Reed Smith LLP
Carter Brod	Morgan, Lewis & Bockius UK LLP
Lachlan Burn	Linklaters LLP
Jim Ho	Cleary Gottlieb Steen & Hamilton LLP
Rosa Lastra	Queen Mary University of London
John McGrath	Sidley Austin LLP
Deborah Zandstra	Clifford Chance LLP

Registered Charity Number: 1164902.

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Minutes:

1. Introduction.

1.1. Duncan Kellaway opened the meeting and delivered a brief introduction.

2. Administration: the FMLC—a charity (Venessa Parekh)¹

2.1. Venessa Parekh described to the members the FMLC's transition from an independent body established by the Bank of England to its current status as a registered charity under the Charity Commission. She elaborated on the ways in which the FMLC's charitable remit has an impact on its work and conduct, including very closely-guarded requirements to be transparent and impartial.²

3. Proposal of the Jubilee Debt Campaign to make “secret” loans unenforceable (Yannis Manuelides)

3.1. Yannis Manuelides began by identifying debt transparency as the principle goal of the proposal by the Jubilee Debt Campaign (the “JDC”) to make “secret” loans unenforceable. He stressed, however, that the complexity of this undertaking cannot be understated.

3.2. Mr Manuelides explained that the proposal was motivated by the recent developments in Mozambique, where “secret” loans to the sum of \$2 billion were issued by the London branches of banks Credit Suisse and VTB to three state owned companies in Mozambique in 2013; these were not disclosed until 2016. The Attorney General of Mozambique filed a legal complaint against officials, citing that the loans violated Mozambique's constitution. Mr Manuelides described that the JDC, in collaboration with the University of Warwick, is striving to ensure that this Mozambique debt does not burden the people of the country. Together, the two institutions have drafted a preliminary Bill which proposes that loans which are not properly publicized should be held unenforceable. The Bill, therefore, suggested that every loan be recorded transparently and completely so that full information was available to the public.

3.3. Mr Manuelides recounted a meeting in which the JDC had put forward its proposal to legal experts, private financial institutions and representatives of the U.K. and U.S. governments and international regulatory bodies. He noted problems with the proposal including a discrepancy in the approach the JDC took to loan transparency. Whereas the JDC was

¹ Please see Appendix I below.

² For further information as to how you can support the work of the FMLC, please contact Thomas Willett at forums@fmlc.org.

primarily concerned with protecting the impoverished citizens of those countries in which corrupt governments had issued secret debt, Mr Manuelides explained that this could also trigger jurisdictional arbitrage and bring up issues of confidentiality.

3.4. Mr Manuelides then mentioned the launch of the International Monetary Fund (“**IMF**”) Global Debt Database in Washington D.C. on Monday 14 May. He explained that this comprehensive dataset covers public and private debt for practically the entire world dating back to the 1950s.

3.5. When opened to discussion, one member observed that despite the campaign’s noble aim of protecting impoverished citizens, the needs and regular procedures followed by banks and investors are being disregarded. He also observed that it was unclear whether contractual adjustments—i.e., through collective action clauses—would be resolving any of the issues of transparency.

3.6. Another participant also queried the scope of the bill, questioning whether the proposal is aimed only at state-owned entities or at private bodies as well. Mr Manuelides clarified that the JDC hopes its proposal will apply as broadly as possible. Similar questions were raised as to the intended application of the proposed Bill to guarantee and derivative contracts.

3.7. Forum members further highlighted concerns that the proposal seemed simplistic and did not take into account the intricacies of the financial markets. For instance, any registry of loans could record the primary parties to the loan but it would be harder to track involvement and the use of proceeds once the loan progressed to the secondary market. Attendees also expressed logistical concerns regarding the proposed register of loans, including questions about who would run it and how much information a bank could disclose without hampering its obligations under other regulations. One member queried the need for an Act of Parliament, mentioning that mechanisms were already in place to combat such loans. Ultimately, Forum members agreed that such a draft Bill will need careful consideration and that progress of the Bill and any feedback from the World Bank and the Autorité des Marchés Financiers (“**AMF**”) should be monitored carefully.

4. Recent developments in Italy and its implications for sovereign debt (Harriet Territt)

4.1. Harriet Territt provided a brief overview of recent developments in Italy. On Monday 28 May, concern that Italy would initiate early elections intensified. The populist coalition government collapsed when the designated Prime Minister Giuseppe Conte announced his decision to abandon plans to form a team of ministers when Sergio Mattarella, the Italian president, blocked Paolo Savona’s nomination as finance minister.

- 4.2. Ms Territt then mentioned that the price of Italian government debt had decreased, with the yield on Italian two-year debt reaching 0.981 per cent, with the equivalent yield on 10-year paper reached 2.697 per cent. Next, she outlined that the gap in yield between Italian government bonds and German bonds of the same maturity rose to 2.17 percentage points from 2.045 percentage points.
- 4.3. Ms Territt reflected on some market concerns that the expanded asset purchase programme brought out by the European Central Bank (“**ECB**”) might be reflective of political climates as it was seen to double up on German debt and draw back on Italian debt during this period.
- 4.4. Although the ripple effects of the changes in Italy’s political landscape had on sovereign debt were interesting, no issues of legal uncertainty were identified.
- 5. Plenary discussion on recent developments and legal uncertainties, including the recent proposals from the E.U. governing sovereign debt**
- 5.1. Leland Goss delivered a talk on the recent proposals from the E.U. on governing sovereign debt. Revisiting the European debt crisis of 2009, Mr Goss outlined the concept of automatic sovereign debt restructuring that was suggested by Germany as a way to lighten the burden on European taxpayers in the event a Eurozone country requires a bailout. Once a country asks for help through the European Stability Mechanism, sovereign bond maturities will automatically be lengthened by three years, turning the bonds into riskier assets and forcing private creditors to carry part of the burden.
- 5.2. Mr Goss then explained how in recent months the Dutch finance minister, Wopke Hoekstra, has reiterated calls for an upfront debt restructuring mechanism and imposing haircut on private creditors in situations where nations with unsustainable debt ask for a euro-area bailout.
- 5.3. To this, Mr Goss stressed the issue of judging the intervention point or trigger of the automatic restructuring mechanism, highlighting that a liquidity problem could escalate into a solvency problem. One participant queries whether such a mechanism could lead to the disintegration of the Euro, to which Mr Goss agreed.
- 5.4. One member highlighted that currently restructuring operates on a discussion basis. A proposal such as this is far more rigid and mechanical and might yield different results. Whether or not the market trusts these automatic outcomes was also discussed, with members expressing their scepticism.

5.5. Members agreed that this topic should be returned to at a later date.

6. Any other business

6.1. Forum members noted that the next meeting of the Sovereign Debt Scoping Forum will be held on Tuesday 11 September between 8.30 and 10.00am.

Financial Markets Law Committee: a charity (And what that really means)

Venessa Parekh, Research Manager

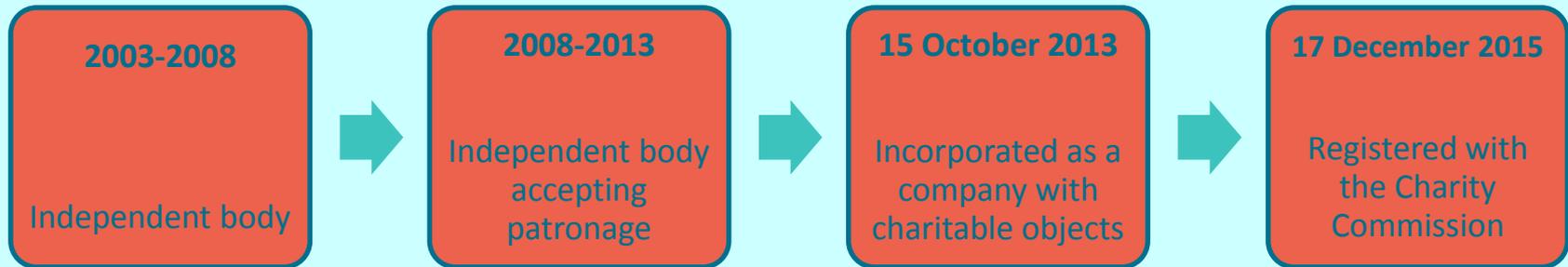


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The road to incorporation

- In **2003** the Bank of England established the FMLC as an independent organisation solely responsible for its own recommendations.
- In **2008**, the FMLC took a step towards greater independence by accepting funding from patrons.
- In **October 2013** the FMLC achieved structural self-sufficiency by **incorporating under charitable articles of association**.
- In **December 2015** the Charity Commission accepted the FMLC's application to **register as a charity**.



The FMLC's charitable remit



According to the charitable remit, the FMLC has a tripartite mission:

- to *identify* relevant issues (the **radar** function);
- to *consider* such issues (the **research** function); and
- to *address* such issues (the **public education** function).

Reduced legal uncertainty and risk is in the public good; the *radar* and *research* functions are somewhat self-explanatory in this regard. The *public education* function is a key aspect of the FMLC's status as a charity, and is addressed in the following ways:

- All FMLC papers, presentations/speeches and correspondence are freely available via the FMLC website.
- The FMLC seeks to raise the profile of its research with those who are best positioned to implement solutions.□This is achieved primarily through correspondence: the FMLC maintains active correspondence with regulatory and legislative groups around the world, particularly HM Treasury and the European Commission.
- Most FMLC events (with the exception of Patrons' events) are free to attend by members of the public.
- The FMLC also acts as a bridge to the judiciary, a task it carries out primarily by organising seminars to brief senior members of the judiciary on aspects of wholesale financial markets practice.

Transparency...

The FMLC follows the Charity Commission's guidance with the aim of maximising transparency. To this end, the FMLC:

- is registered with—and submits financial data to—the European Transparency Register;
- publishes full lists of both Patrons and Members on its website;
- is regularly audited by an independent accountancy firm;
- provides funding/expenditure breakdowns on request;
- publishes the minutes of Committee meetings to its website;
- publishes the agendas/minutes of every Scoping Forum meeting on its website;
- maintains policies governing conflict of interest, risk management and volunteer management; and
- remains independent from the Bank of England, government or legislative bodies and the financial sector itself..



...and impartiality



Since its creation the FMLC has been an independent body solely responsible for its own views and research. The Bank of England does not guide or submit input to the FMLC's reports. Anyone—including members of the general public—can raise issues of legal uncertainty for the Committee to investigate.

The FMLC does not comment on or seek to influence matters of policy. Issues relating to policy rather than solely to legal uncertainty are rejected.

The FMLC is dedicated to impartial consensus; for this reason the absolute maximum number of members from a single organisation is two individuals for a Scoping Forum, and one for a Working Group.

Scoping Forums have no *vires* to initiate projects or pass resolutions affecting the FMLC. Substantive issues of legal uncertainty are proposed by the Secretariat to the FMLC as a topic which may require further action.

Papers drafted by Working Groups are submitted to the entire Committee for review to ensure accuracy, objectivity and impartiality.

The FMLC is supported entirely by patronage. Patronage relates to funding only, there are no further contribution expectations or requirements and no special treatment for Patrons apart from seasonal social events.

Future endeavours/ can you help?

The FMLC's educational remit is theoretically endless: there are always more financial markets participants, regulatory/government bodies and members of the public to keep informed of our work.

To that end, the FMLC is currently researching or pursuing the following:

- A full revamp of the website, focusing on accessibility and greater sharing of materials.
- Boosting attendance of FMLC events by members of the general public.

The FMLC is also considering new ways to disseminate its research, and in future may investigate:

- Recording/broadcasting solutions for events to allow greater access.
- Summarising and disseminating the FMLC's work in easily digestible media formats such as short videos or podcasts.

The FMLC is grateful for suggestions on how to amplify its message, better to serve its charitable function and the general public. Can you help?