



Financial Markets Law Committee (“FMLC”)

BREXIT—HIGH LEVEL ADVISORY GROUP (“HLAG”)

Date: Friday 8 December 2017

Time: 9.30am – 11.00am

Location: Bank of England’s Moorgate Office’s, 20 Moorgate, London EC2R 6DA

In Attendance:

Joanna Perkins (Chair)	FMLC
Charles Clark	Linklaters LLP
Paul Double	City of London Corporation
Daniel Franks	Norton Rose Fulbright LLP
Kate Gibbons	Clifford Chance LLP
Professor Trevor Hartley	London School of Economics and Political Science
Rashpal Kaul	Rabobank International
Vanessa Knapp	
Dorothy Livingston	Herbert Smith Freehills LLP
Ian Mathers	
Ed Murray	Allen & Overy LLP
Ben Perry	Sullivan & Cromwell LLP
Simon Puleston Jones	FIA
Arad Reisberg	Brunel University London
Andrew Seager	Taylor Wessing LLP
Jennifer Enwezor	FMLC Project Manager
Venessa Parekh	FMLC Research Manager Communications Officer
Rachel Toon	FMLC Executive Assistant Events Manager

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Minutes:

1 Introduction

- 1.1 Dr Perkins opened the meeting and gave a brief introduction. She then recapitulated developments since the last meeting of the HLAG which was held in September 2017, noting in particular the “agreement-in-principle” reached by the E.U. and the U.K. in relation to the Brexit financial settlement (“divorce bill”) which had been agreed during the preceding night.

2 Withdrawal Bill amendments (Paul Double/Charles Clark)

- 2.1 Mr Double highlighted eight amendments to the European Union (Withdrawal) Bill (the “**Withdrawal Bill**”), which have been proposed to the House of Commons. The first three of these have already been considered and the remaining five will be dealt with by the end of the year. Mr Double observed that some of the proposed amendments were aligned with, or even inspired by, recommendations made in FMLC publications. The proposed amendments deal with the following issues:

1. A request for rules/guidelines to govern interpretation;
2. Non-binding aids to interpretation;
3. Prospective E.U. legislation, which might have an impact on transitional arrangements;
4. An agreed definition of reciprocal rights;
5. Business consultation on modifications;
6. Implementation period;
7. Mutual market access; and
8. Private contracts.

- 2.2 Charles Clark noted that uncertainty in the context of the Withdrawal Bill arose from two sources: its substance (i.e., the text itself) and the process by which it and related statutory instruments would be written, reviewed and passed. Both of these types of uncertainty could be addressed by the application of new rules of interpretation to be applied to existing E.U. and U.K. legislation. This could deal for example with issues

relating to (i) references in legislation to E.U. Member States; (ii) territorial scope; and (iii) the functions of E.U. institutions. Having such rules would reduce significantly the need for so many statutory instruments and so would reduce the scope for uncertainty or the need for the use of Henry VIII powers.

- 2.3 Members of the HLAG discussed whether the FMLC could usefully make recommendations on the questions around interpretation. Dr Perkins said that the FMLC had previously and briefly considered these questions in a paper published over the summer on cross-border corporate insolvency proceedings post-Brexit. She encouraged attendees to write to the Secretariat if they would like to recommend that this issue is examined in greater depth.

3 Update on FMLC's work on Brexit (Joanna Perkins)

- 3.1 Joanna Perkins reported that the FMLC has published two papers since summer, one on the Provisions and Application of Third Country Regimes in E.U. Legislation and the other on the Impact on Cross-Border Insolvency Proceedings. A letter has also been sent to the Ministry of Justice on the subject of the Withdrawal Bill. The Secretariat is currently in the process of convening a working group on the continuity of contracts and will also hold a Colloquium on this topic on Thursday 18 January 2018. Both the working group and the Colloquium will consider a number of diverse opinions.

4 Plenary discussion on recent Brexit-related developments

- 4.1 Members recommended that the FMLC should (i) undertake work on the interpretation of autonomous E.U. terms post-Brexit and (ii) keep a watching brief on statutes as they are enacted.