

Financial Markets Law Committee (“FMLC”)

Sovereign Debt Scoping Forum

Date: Friday 1 December 2017

Time: 2.00pm to 3.30pm

Location: Morgan Lewis & Bockius LLP, Condor House, 5-10 St. Paul's Churchyard, London EC4M 8AL



In Attendance:

Carter Brod (Chair)	Morgan Lewis & Bockius LLP
Antony Beaves	Bank of England
Ian Clark	White & Case LLP
Karl Clowry	Paul Hastings LLP
Francis Fitzherbert-Brockholes	White & Case LLP
Jim Ho	Cleary Gottlieb Steen & Hamilton LLP
Duncan Kellaway	Freshfields Bruckhaus Deringer LLP
Yannis Manuelides	Allen & Overy LLP
John McGrath	Sidley Austin LLP
Rodrigo Olivares-Caminal	Queen Mary University of London
Andrew Shutter	Cleary Gottlieb Steen & Hamilton LLP
Harriet Territt	Jones Day
Philip Wood	Allen & Overy LLP
Deborah Zandstra	Clifford Chance LLP
Venessa Parekh	FMLC

Guest Speakers:

Luke Barefoot (dial in)	Cleary Gottlieb Steen & Hamilton LLP
Richard Cooper (dial in)	Cleary Gottlieb Steen & Hamilton LLP
Tim DeSieno (dial in)	Morgan Lewis & Bockius LLP

Regrets:

Jason Crelinsten (dial-in)	Greylock Capital Management LLC
Emma Dickinson	Deutsche Bank AG
Robert Gray	
Leland Goss	International Capital Market Association (“ICMA”)

Registered Charity Number: 1164902

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Minutes

1. Introductions

- 1.1. Carter Brod opened the meeting and delivered a brief introduction.

2. Administration:

a. a short presentation: Your Scoping Forum Needs You (Venessa Parekh);¹

- 2.1. Venessa Parekh provided participants with an overview of their role as members of an FMLC Scoping Forum, specifically outlining the roles of the Chair, Speakers and attendees before, during and after the Forum meetings.

b. confirmation of the draft 2018 Forward Schedule;²

- 2.2. As no concerns were raised, the dates for the 2018 Forward Schedule are now confirmed. Meetings will be scheduled normally for 8.30am with the option to move meetings to the afternoon on an *ad hoc* basis to accommodate guest speakers from abroad.

c. suggestions for the 2018 Forward Agenda.

- 2.3. Ms Parekh asked that suggestions for the 2018 Forward Agenda be sent *via* email.³

3. Sovereign Debt Restructurings in Venezuela and Puerto Rico (Luke Barefoot, Richard Cooper).

- 3.1. Richard Cooper provided an update on the sovereign debt crisis in Venezuela where the government and state-owned enterprises have external liabilities totalling approximately \$194 billion.

- 3.2. On 2 November 2017, President Maduro announced on television a refinancing and restructuring of all external debt and the creation of a Presidential Commission for the Renegotiation of the Terms of the Republic's and PDVSA's External Debt (the "**Presidential Commission**") which would be headed by the Vice President. At the Presidential Commission's first meeting on 13 November, the Vice President mentioned that the Venezuelan government had repaid over \$73 billion in debt since 2013, but that

¹ Please see Appendix I below.

² *Ibid*, slide 6.

³ If you have any suggestions of agenda items or speaker topics, please email Venessa Parekh at: research@fmlc.org.

U.S. sanctions combined with account closures at Citi, Citi China and Deutsche Bank and the freezing of \$1.2 million at Euroclear made repayment impossible.

- 3.3. Political manoeuvring within the government and PDVSA lends to a high degree of uncertainty. This is compounded by the humanitarian crisis on the ground which has lent to a great deal of debate around U.S. and E.U. sanctions. The Presidential Commission's members, too, appear on U.S. sanctions lists. From a legal perspective, restructuring would prove challenging owing to the multiplicity of external factors. It seems like default on some bonds is inevitable but it remains to be seen whether the government or PDVSA or both will default.
- 3.4. Shifting focus, Mr Barefoot provided a quick update on Puerto Rico, including the years of negative GDP growth, the demographic changes which have led to economic stagnation and the most recent devastation caused by Hurricane Maria. Puerto Rico also has a complex debt profile: debt to the tune of \$72 billion is owed by 18 different issuers, all of which are interrelated and have complex and unique structures.
- 3.5. Puerto Rico's municipalities are definitionally excluded from the provision in U.S. bankruptcy law for municipal restructuring, known as Chapter 9. As an alternative, the "Puerto Rico Oversight Management & Economic Stability Act" (**PROMESA**) was signed into law in June 2016. PROMESA established a seven-member oversight board to provide fiscal oversight through joint development and approval of budgets, provided for an "automatic stay" pending commencement of restructuring proceedings, and established two separate processes for potential debt adjustment, each overseen and approved by a U.S. district court judge.
- 3.6. Mr Barefoot explained the ongoing challenges to PROMESA, including constitutional concerns regarding the relationship between the Oversight Board and Puerto Rico's elected government; the preponderance of litigation within the Commonwealth's PROMESA proceeding; the uncertainty around the availability of substantive consolidation and the questions about the status of lien for post-petition revenues on which there is very little case law.
4. **UN Department of Economic & Social Affairs' [report](#) on "market-based" approaches to sovereign debt rescheduling (Deborah Zandstra).**
 - 4.1. Ms Zandstra provided a background to the UN Report, which had been written in consultation with teams from the Bank of England, the Commonwealth Secretariat and other international bodies. The researchers had distilled the work into a number of

questions about legal questions in relation to debt and bond contracts and provided recommendations with the aim of enhancing stakeholder understanding.

4.2. The questions raised in the Report were in relation to, *inter alia*:

- (1) bond contract reform, including initiatives to encourage single limb aggregation, extended *pari passu*, and single limb collective action clauses in debt not issued under U.K. or New York law;
- (2) the diversification of sovereign bonds, with much discussion about GDP-linked bonds;
- (3) sovereign loans, and the initiative to shift market preference from unanimous creditor consent to majority consent;
- (4) trust structures; and
- (5) the governance of sovereign debt by E.U. legislation such as the Market Abuse Regulation, the Prospective Directive, etc.

4.3. The Report will be discussed with China and other G20 countries.

5. Brazilian Corporate Debt Restructuring: Sovereign Debt Overtones (Tim DeSieno).

5.1. Mr DeSieno focused on the overlap between sovereign and corporate debt. He noted that while there were differences in the legal and technical protections available in both contexts, there are parallels in the ways in which they are dealt with during financial crises.

5.2. Mr DeSieno illustrated this point in the context of Brazil, where the government is frequently heavily involved in the restructuring of corporate debt. He referred to the cases of *Celpa/Rede*, *Schahin*, and *Oi*.

5.3. A Forum member asked whether bilateral treaties were used by aggrieved creditors to seek redress for government involvement in Brazilian corporate restructurings. Mr DeSieno said this was uncommon.

6. Any other business.

6.1. No other business was raised.