



Financial Markets Law Committee (“FMLC”)

Sovereign Debt Scoping Forum

Date: Friday 3 March 2017

Time: 8.30am to 10.00am

Location: The offices of Jones Day, 21 Tudor Street, London, EC4Y 0DJ

In Attendance:

Harriet Territt (Chair)	Jones Day
Nikita Aggarwal	Queen Mary University of London
Carter Brod	Morgan, Lewis & Bockius LLP
Karl Clowry	Paul Hastings LLP
Emma Dickinson	Deutsche Bank AG
Francis Fitzherbert-Brockholes	White & Case LLP
Michael Godden	Norton Rose Fulbright LLP
Leland Goss	International Capital Market Association (“ICMA”)
Mark Joy	Bank of England
Duncan Kellaway	Freshfields Bruckhaus Deringer LLP
Yannis Manuelides	Allen & Overy LLP
Richard O’Callaghan	Linklaters LLP
Camilla Perera (by telephone)	P.R.I.M.E. Finance
Deborah Zandstra	Clifford Chance LLP
Venessa Parekh	FMLC
Thomas Willett	FMLC

Regrets:

Antony Beaves	Bank of England
Lachlan Burn	Linklaters LLP
Robert Gray	
Jim Ho	Cleary Gottlieb Steen & Hamilton LLP
Professor Rosa M Lastra	Centre for Commercial Law Studies
Harry Lee	HM Treasury
John McGrath	Sidley Austin LLP
Professor Rodrigo Olivares-Caminal	Queen Mary University of London
Tolek Petch	Slaughter and May

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Minutes:

1. Introduction

1.1. Harriet Territt (Chair) opened the meeting and gave a brief introduction.

2. An update on GDP-linked bonds (Mark Joy and Yannis Manuelides)

2.1. Mark Joy and Yannis Manuelides delivered an update on the ongoing official and private sector work on GDP-linked bonds, including on a model term sheet ([*The London Term Sheet*](#)). It was noted that a call for further analysis of GDP-linked bonds was made by the Chinese G20 Presidency last year, and has been taken up by the current German G20 Presidency.

2.2. They outlined the feedback they had received on the model term sheet and how the latest version had taken this on board, in particular on:

- Indexation to lagged growth rates to provide investor protection over data revisions;
- Currency of denomination, where domestic currency instrument might also optionally be settled in foreign currency;
- Protection of principal; and
- Status, cross default and collective action.

2.3. It was suggested that highly indebted developed countries might benefit most from issuance. Forum members considered the benefits to emerging countries, whose debts are already being restructured, of offering GDP-linked bonds. Some viewed that this may prove expensive for mid- and low-income countries.

2.4. It was concluded that the regulatory aspects of GDP-linked bonds should be considered further, and that the Forum should revisit this topic in subsequent meetings.

3. Sukuk and Conventional Bond Issues with a look at the case study of Egypt (Richard O’Callaghan)

3.1. Richard O’Callaghan outlined recent developments in sukuk and conventional bond offerings by sovereigns, with a particular focus on the architecture of the recent Egyptian bond offering.

3.2. The impact of sukuk structures on collective action clauses (“CACs”) was also highlighted (as regards both the format of the CAC provisions in sovereign sukuk—where adopted at all—as well as changes to CAC provisions in conventional sovereign bonds to seek to accommodate future sukuk issues by the same sovereign).

4. Sovereign debt restructuring: developments in the case of Venezuela, Greece and Argentina (Deborah Zandstra)

4.1. Deborah Zandstra delivered updates on Venezuela, Greece and Argentina’s sovereign debt restructuring.

4.2. It was suggested that there may be legal complexities to consider in the case of a default in the different pricing of Venezuela’s sovereign bonds.

4.3. Attention was drawn to the position taken by the International Monetary Fund (“IMF”) on Greece and its refusal to extend further lending.

4.4. With regards to Argentina, attention was drawn to the revised analysis in *White Hawthorne v Argentina*. It was concluded that the [FMLC Paper](#) on *pari passu* clauses did not need to be revisited in light of this judgment.

5. Sovereign debt restructuring: developments in the case study of Mozambique (Francis Fitzherbert-Brockholes)

5.1. Francis Fitzherbert-Brockholes gave a short summary of Mozambique’s sovereign debt restructuring.

5.2. It was suggested that the Scoping Forum could discuss this case study again following the impending publication of an IMF report. Attention was also drawn to the concept of “illegality” both within the context of Mozambique and as a broader issue of legal complexity which should also be revisited in subsequent meetings.

6. The Ukraine/ Russia sovereign bond dispute (Nikita Aggarwal)

- 6.1. Nikita Aggarwal presented a background summary of the Ukraine/ Russia sovereign bond dispute. A decision is expected from the U.K. High Court in the coming months.
- 6.2. The Forum agreed that the judgment will yield questions for consideration in subsequent meetings.

7. Forum administration

- 7.1. Venessa Parekh outlined the remit of the FMLC, the practical meaning of “legal uncertainty” within this remit, the mission which derives from the remit, the role of scoping fora within this mission, the six purposes which are fulfilled by the eight scoping fora which the FMLC has established so far and the questions which it would be helpful for members to address in 2017.¹
- 7.2. It was suggested by members that, for the next meeting, the questions Venessa posed to the Forum could be included in the agenda.
- 7.3. The procedure of publishing Forum documentation on the FMLC website within the public domain was outlined.

8. Any other business

- 8.1. No other business was raised.

¹ Please see Appendix I below.

Financial Markets Law Committee Sovereign Debt Scoping Forum



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Appendix I—THE FMLC RADAR FUNCTION: *an introduction*



Venessa Parekh, Acting Project Secretary
Financial Markets Law Committee

FMLC Remit

“The role of the Financial Markets Law Committee (the "FMLC" or the "Committee") 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.”

FMLC Founding Documents, September 2002



What this means...

"But in my view, legal uncertainty is just another name for legal risk: the risk of increased litigation over legal rights that are poorly defined, the risk of market disruption because legislation has unintended consequences, or the risk that market standard contracts turn out to be unenforceable. These are broadly the sorts of issues the FMLC has been established to tackle."

Joanna Perkins, FMLC Chief Executive



FMLC Mission



- According to the 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).
- The first and second of these are fulfilled in part by the establishment of specialist scoping forums.
- In particular, the **radar function** relies heavily on the FMLC's scoping forums and other horizon-scanning, advisory bodies.

Scoping Forums

“Scoping forums serve as an avenue for the FMLC to engage with focus groups on legal issues affecting specific segments of the financial markets. The forums serve as spaces for discussion of broader issues of legal uncertainty, and members formulate and propose to the FMLC issues considered by them to cause substantive legal uncertainty to their industry.”

FMLC Brochure, January 2017



How Scoping Forums work...



- A scoping forum, then, should serve six key purposes:
 1. to establish a pool of expertise available to the FMLC;
 2. to enable full discussion among interested parties with a view to facilitating collective legal risk assessment;
 3. to guide the FMLC and establish priorities for the expenditure of resources;
 4. to make recommendations to the FMLC as to specific issues to be addressed;
 5. to make non-binding suggestions as to the manner of the FMLC's engagement with the issues; and
 6. to nominate experts to working groups.
- At this time of significant political change, the FMLC Secretariat would be grateful for assistance with items 2-4, in particular.

Questions, questions...

- Assuming the FMLC has limited resources to devote to Sovereign Debt issues, in 2017, which are those that it should prioritise?
- Should the FMLC be collaborating with the IMF on ad hoc discussion forums?
- Does the Forum agree that the flow of information between members and the FMLC Secretariat should ideally be a 2-way process? How can the Secretariat best assist the Forum in its discussions?
- Does the Forum agree that the Secretariat should table updates for the Forum on issues which the FMLC considers relevant to the industry, although not a commercial priority (e.g. developments in other jurisdictions)?

Summary and Conclusion



To sum up...

- The FMLC is tasked with identifying, considering and addressing legal uncertainty...
- ...which is sometimes better thought of as “legal risk”.
- The Forum is a means by which the FMLC can fulfil its radar function.
- The Forum serves six key purposes.
- At this time, the FMLC Secretariat would be grateful for help with assessing legal risks, identifying priorities and selecting issues for further work.
- The Secretariat has highlighted questions for possible consideration.*

**For a fuller list of questions for consideration, please apply to the Secretariat, which will make one available by email or at the next meeting.*