Financial Markets Law Committee (“FMLC”)

Insurance Scoping Forum

Date: Tuesday 21 May 2019
Time: 2.00pm to 3.30pm
Location: AIG, 58 Fenchurch Street, London EC3M 4AB

In Attendance:

Chris Newby (Chair) AIG
George Belcher Skadden, Arps, Slate, Meagher & Flom LLP
Pollyanna Deane Simmons & Simmons LLP
Beth Dobson Slaughter and May
Reid Feldman Kramer Levin Naftalis & Frankel LLP
David Kendall Cooley U.K. LLP
Adam Levitt Ashurst LLP
James Smethurst Freshfields Bruckhaus Deringer LLP
Clare Swirski Debevoise & Plimpton LLP
Michael Wainwright Dentons U.K. and Middle East LLP

Venessa Parekh FMLC

Guest Speaker

Lesley Carline Pensions Management Institute

Regrets:

Peter Bloxham Linklaters LLP
Duncan Barber Clyde &Co (LLP)
Nigel Brook Clifford Chance LLP
Hilary Evenett Royal & Sun Alliance Insurance Group plc
Charlotte Heiss Hogan Lovells LLP
Steven McEwan Swiss Re Management Ltd, UK Branch
Jonathan Teacher

Registered Charity Number: 1164902.

“The FMLC” and “The Financial Markets Law Committee” are terms used to describe a committee appointed by Financial Markets Law Committee, a limited company (“FMLC” or “the Company”). Registered office: 8 Lothbury, London, EC2R 7HH. Registered in England and Wales. Company Registration Number: 8733443.
Agenda:

1. **Introductions**

1.1. Ms Parekh opened the meeting as the Chair was delayed.

2. **Administration: FMLC in Numbers (Venessa Parekh)**

2.1. Ms Parekh delivered a short presentation on the FMLC’s work, highlighting key numbers in relation to Scoping Forums, Working Groups, events and budget.

3. **Pensions Management Institute’s Master Trust Survey Report (Lesley Carline)**

3.1. Ms Carline introduced herself and the Pensions Management Institute (“PMI”), of which she is President. She provided a brief overview of the services offered by the PMI and of its membership.

3.2. She then moved on to a report published by the PMI on Master Trusts in December 2018. Master Trusts, she explained, had been available on the market for years but had become increasingly popular since the pensions auto-enrolment scheme had come into effect. A Master Trust is a multi-employer pension scheme where each employer may have its own section within the master arrangement but there is only one legal trust and therefore only one trustee board entrusted with decision-making powers on behalf of all members.

3.3. The PMI had established a Working Group to survey the Defined Contribution Master Trust landscape. The Working Group comprised representatives involved with all aspects of Master Trusts. Ms Carline noted that the survey covered questions in relation to regulation, skill, governance and technology and provided explanations of each of the results. The analysis showed that there was a trend, owing to their lower operating costs and simplicity, of Master Trusts steadily taking the place of single employer pension schemes. There remained, however, some challenges—emerging technologies, for example—which would need further analysis.

3.4. A discussion followed on the role of employers in Master Trusts and on technological capabilities. Forum members identified the Defined Benefit “superfund”—which involves a third party providing additional risk capital to replace the employer covenant of the sponsor—as an area of convergence between insurance and pensions to which they would like to return in the future.
4. **Insurance Distribution Directive: Structures between Brokers and Issuers (Chris Newby)**

4.1. Mr Newby drew attendees’ attention to a concern under Directive (EU) 2016/97 on insurance distribution (the “**Insurance Distribution Directive**”) arising in the context of Brexit. Article 16 of the Insurance Distribution Directive imposed a restriction on the use of insurance intermediaries, requiring insurance and reinsurance undertakings and intermediaries to use the insurance and reinsurance distribution services only of registered insurance and reinsurance intermediaries or ancillary insurance intermediaries including those referred to in Article 1(3). As a result, it seemed as though only E.E.A. intermediaries may service the E.E.A. market. Mr Newby noted the geographical restriction in Article 1(6) of the Insurance Distribution Directive which provides that the Directive does not apply to distribution activities outside the E.U. and it would affect a Member State’s law in respect of insurance and reinsurance distribution activities by (re)insurers or intermediaries established in a Third Country. A recent Question-and-Answer published by the European Insurance and Occupational Pensions Authority (“EIOPA”) had, however, further highlighted the concern that, after Brexit, insurers would face difficulty in determining where its intermediary would need to be registered if its clients and the risks being insured were on different sides of the U.K.-E.U. border.

4.2. Forum members discussed the question and noted that these were uncharted waters. The provisions mentioned above had endured from Directive 2002/92/EC on insurance mediation (the “**Insurance Mediation Directive**”), which had preceded the Insurance Distribution Directive. They only gave rise to concerns in the context of Brexit and therefore an element of discretion might be necessary.

5. **Any other business**

5.1. No other business was raised.

---

1 The next meeting of the Insurance Scoping Forum is scheduled for 2pm on 6 August 2019.
Did you know ..?
A quick glance at some FMLC numbers

Venessa Parekh
Since 2003, the FMLC has analysed and made recommendations to resolve legal uncertainties in 222 disparate topics.
FMLC research is conducted through:

<table>
<thead>
<tr>
<th>Scoping Forums</th>
<th>Working Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>4</td>
</tr>
<tr>
<td>• Asset Management</td>
<td>• ... are currently active. Two deal with matters related to Brexit.</td>
</tr>
<tr>
<td>• Banking</td>
<td>In order to be agile in its responses to Brexit statutory instruments, the FMLC did not establish Working Groups but liaised with relevant experts to conduct a review and publish its results.</td>
</tr>
<tr>
<td>• Brexit</td>
<td></td>
</tr>
<tr>
<td>• Infrastructure</td>
<td></td>
</tr>
<tr>
<td>• Insurance</td>
<td></td>
</tr>
<tr>
<td>• Fintech</td>
<td></td>
</tr>
<tr>
<td>• Securities</td>
<td></td>
</tr>
<tr>
<td>• Sovereign Debt</td>
<td></td>
</tr>
<tr>
<td>• Quarterly Discussion Forum (closed)</td>
<td></td>
</tr>
</tbody>
</table>
FMLC Publications

16 publications were produced in 2018

8 publications were on the U.K.’s withdrawal from the E.U.

7 publications on the review of Brexit-related statutory instruments (between August 2018 to April 2019).
2018-Present FMLC Events

5 formal events were held.

12 guest speakers across all events.

85 guests attended the Autumn Seminar on Incorporating E.U. Law into the U.K. Domestic Framework, the most attended FMLC event of 2018.
International connections

15. Speeches were given by the FMLC CEO in 4 different countries

4. Calls are held every year with the Financial Markets Lawyers Group ("FMLG") (New York)

3. Sister organisations (associated with the Federal Reserve, the ECB and the Bank of Japan) participate in an annual conference with the FMLC

7. Jurisdictions (E.U., Hong Kong, Japan, Switzerland, Singapore, U.K. and U.S.) hold a biannual information-exchange video conference
People and the FMLC

- 37 patron organisations
- 52 average number of members per Scoping Forum
- 28 Committee Members
- 24 average number of members per Working Group
- 8 staff at the FMLC Secretariat (including 2 staff members on maternity leave)
Looking under the hood …

Projected 2019 budget

- Budget is accrued unevenly from donations by:
  - Bank of England
  - City Remembrancer’s Office for the City of London Corporation
  - Association for Financial Markets in Europe
  - AIG Europe Limited
  - Lloyd’s of London
  - Around 30 law firms
  - Other market participants

£396,000*

83%

Percentage of charitable income spent on Secretariat salaries

- £329,000.00* will be spent on Secretariat salaries in 2019.
- The rest of the budget goes towards administrative costs and inviting/funding foreign experts to share their expertise at the FMLC educational events.
- The Bank of England bears many of our overheads and is the largest donor when this is taken into account.

£396,000* projected 2019 budget

*All figures rounded to nearest £000
You can get involved in the FMLC’s work by becoming a:

- patron
- stakeholder
- recipient to our general mailing list

for a sample Patrons’ Newsletter, a copy of the FMLC donation pack, or for a sample Stakeholders’ Newsletter and any other enquiries, or should you wish to receive regular notifications about new FMLC publications, please contact: Debbie Hayes (secretarial@fmlc.org).