Financial Markets Law Committee (“FMLC”)

Sovereign Debt Scoping Forum

Date: Tuesday 5 March 2019
Time: 8.30am to 10am
Location: Bank of England, Threadneedle Street, London, EC2R 8AH

In Attendance:
Leland Goss (Chair) ICMA
Ian Clark White & Case LLP
Rosa Lastra Queen Mary University of London
Yannis Manuelides Allen & Overy LLP
John McGrath Sidley Austin LLP
Richard O’Callaghan Linklaters LLP
Rodrigo Olivares-Caminal Queen Mary University of London
Deborah Zandstra Clifford Chance LLP

Venessa Parekh FMLC

Regrets:
Carter Brod Morgan, Lewis & Bockius UK LLP
Francis Fitzherbert-Brockholes White & Case LLP
Duncan Kellaway Freshfields Bruckhaus Deringer LLP
Andrew Shutter Cleary Gottlieb Steen & Hamilton LLP
Harriet Territt Jones Day
Philip Wood QC
Minutes:

1. Introductions

1.1. Mr Goss opened the meeting.

2. Administration: Elsewhere at the FMLC (Venessa Parekh)

2.1. Ms Parekh updated the members with the work undertaken and issues of legal uncertainty being considered at the other FMLC Scoping Forums. She drew attention to the new Securities Markets Scoping Forum which had been recently established by the FMLC.

3. Impact of International Treaties on Debt Restructuring, with a focus on the E.U.-Singapore Investment Protection Agreement (Leland Goss)

3.1. Mr Goss recounted to attendees a complexity which had been brought to his attention in relation to the interaction between dispute resolution mechanisms in international treaties and the framework established in the E.U. for sovereign debt restructurings. The E.U.-Singapore Investor Protection Agreement (“EUSIPA”), approved by the European Parliament in February 2019, treats government bonds as “covered investments” (in contrast to the Comprehensive Economic and Trade Agreement (“CETA”) between Canada and the E.U. which only includes debt issued by private companies). The approach in the EUSIPA will make it more difficult for countries to restructure their debt and conflict with the normal functioning of collective action clauses (“CACs”).

3.2. Attendees discussed whether treaties should explicitly exempt government debt from such restructuring clauses, as the North American Free Trade Agreement does. They agreed that the inclusion of secondary market investors seemed out of place and created unnecessary complications. Attendees observed that the European Stability Mechanism had not been involved in the negotiation or drafting of the EUSIPA.

3.3. Attendees discussed whether the simultaneous application of the investor state dispute settlement (“ISDS”) in the EUSIPA with CACs would lead to divergent outcomes in case of arbitration. A Forum member observed that private investors were likely to look for such dispute settlement clauses as it provides comfort in the face of risks that restructuring under CACs would be slow or domestic laws might discriminate against foreign investors. Forum members noted, however, that these clauses would cause problems amongst creditors. They agreed to recommend to the Committee that a project be initiated to explore how
international treaties might be better drafted to avoid overlap and potential conflict with CACs and sovereign debt restructurings generally.

4. **Transparency Principles from Private Debt (Deborah Zandstra)**

4.1. Ms Zandstra provided an update on progress made by a working group established by the Institute of International Finance working on transparency principles for private debt to mirror principles agreed by the Group of 20 (“G20”) countries for government debt. She noted that the Group had recently deliberated questions around which debt instruments might be included and which countries might apply the transparency initiative.

4.2. Forum members discussed where and how the information published by firms would be stored and the difficulties in bringing market participants on board. They asked whether the initiative had been launched to prevent a situation of the sort experienced in Mozambique. Ms Zandstra said that the project had many objectives, including that, but that it would not go far enough to prevent completely a similar situation from arising.

4.3. Ms Zandstra agreed to share the transparency principles with the Forum at its next meeting if they were ready.

5. **Climate resilient bonds (Deborah Zandstra)**

5.1. Ms Zandstra then turned to “climate resilient” or “hurricane” bonds that included a “trigger”, associated with a climate disaster such as a hurricane or earthquake, which would defer pay-out of principal and interest. She observed that there remained uncertainty as to the trigger and whether it would need to be corroborated by an international institution like the World Bank, or whether it would work in a manner similar to climate-related insurance where pay-outs are simply triggered by the event. Ms Zandstra said that these bonds remained in early stages—so far, term sheets had been prepared. She noted, however, that they would work well for small Caribbean and Pacific Island nations which were subject to these natural catastrophes regularly. An attendee asked about the rating applications for hurricane bonds. Ms Zandstra said that she was unaware of any discussions around this yet.

6. **Update on Venezuela (Rodrigo Olivares-Camimal)**

6.1. Dr Olivares-Camimal noted that while there had been political change in Venezuela over the past few months, not much had changed on the legal front for investors. He said that it
was likely that the Argentinian debt litigation would impact creditors’ decisions as to whether and when to sue.

6.2. Attendees discussed the Bank of England’s decision to lock-in Venezuelan gold resources and the legal powers on which the decision was made.

7. Any other business

7.1. Ms Parekh asked Forum members if they would be amenable to changing the time of the next Forum meeting, scheduled for 4 June, so that it could be held in the afternoon to accommodate a guest speaker. Attendees agreed.

7.2. No other business was raised.