



## Financial Markets Law Committee (“FMLC”)

### Securities Markets Scoping Forum

Date: Wednesday 2 February 2022

Time: 2.00pm to 3.00pm

Virtual meeting

#### Attendees:

Brian Gray (moderator)	FMLC Secretariat
Andrew Bryan	Clifford Chance LLP
May Chiu	Allen & Overy LLP
Leland Goss	International Capital Markets Association
Tim Morris	Ashurst LLP
Ferdisha Snagg	Cleary Gottlieb Steen & Hamilton LLP
James Warbey	Milbank LLP
Sanjev Warna-kula-suriya	Latham & Watkins LLP

Venessa Parekh	FMLC Secretariat
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#### Guest Speakers

Antony Beaves	Bank of England
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#### Regrets

Mark Chalmers	Davis Polk & Wardell LLP
Kristina Locmele	Slaughter and May
Robert Williams	Natwest

#### Agenda:

1. Introductions
2. Hague Conference meeting (Antony Beaves)—see briefing below and paper attached
3. Any other business

**Registered Charity Number: 1164902.**

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## Hague Conference meeting

To be brief, there is a paper (attached) to be discussed at an upcoming March meeting of the Hague Conference.

It harks back to the 2006 Hague Securities Convention on Intermediated Securities and refers (see para 14) to a number of issues that have been recently raised or discussed, and where I would be grateful for background or comments that might be fed into HMT and the Ministry of Justice, so as to aid our better understanding and contribute to any UK input at the meeting.

Obviously, some of these matters are more for inter-government/institutional action (like work with UNIDROIT) but at the heart of it one might generally comment whether wider ratification of the 2006 Convention is appropriate/still a good thing for intermediated securities (mindful that in the UK we have the 'location' provisions of Regulation 23 of the Settlement Finality Regulations and Regulation 19 of the Financial Collateral Regulations), and the extent to which cross-border harmonisation on the relevant governing law for DLT systems/framework can be achieved within or through the application of the principles in the Convention, or is some other approach (whether based on the Convention or otherwise) needed?

The PB has collated the following list of possible topics for inclusion in the programme of the 2022 Commercial and Financial Law Conference. This list is by no means exhaustive, but provides an overview of the issues that have been recently raised or discussed:

- Narrowing differences: How can differences between the HCCH 2006 Securities Convention's primary rule and PRIMA be narrowed to encourage accession to the Convention?
- Party autonomy: Does the Convention limit the choice parties might make in their account agreements with the relevant intermediaries? Would any limitation on the parties' choice ease any eventual regulatory concerns?
- Engagement with Centralised Securities Depositories (CSDs): Would the Convention lead to a situation where more than one law governs the proprietary aspects of book-entry securities? Would limiting an intermediary's choice of governing law to only the place where it maintains its book-entry records be sufficient to accommodate concerns about systemic risk?
- Reconceptualising rights in securities: How do States currently conceptualise rights in securities in their substantive law? In light of transactional practices, are there discussions at the national level to reconceptualise on the basis of their relational aspects, rather than regarding securities as property that confers *erga omnes* rights? Given that securities are intermediated and held through chains of holdings in a commingled manner, should they still be considered moveable property? Can traditional legal categories of property law apply to digital and crypto-assets?
- Capitalising on synergies with the Geneva Securities Convention Given the complementary nature of the HCCH 2006 Securities Convention and the Geneva Securities Convention, what work can be done in partnership with UNIDROIT to promote the two instruments?

Please be aware that this request does not constitute any formal consultation or request for evidence or otherwise, whether by the Bank/HMT or the Ministry of Justice.