



## Financial Markets Law Committee (“FMLC”)

### Sovereign Debt Scoping Forum

Date: Tuesday 7 September 2021

Time: 2.00pm to 3.00pm

Virtual meeting

#### Attendees:

Yannis Manuelides (Moderator)

Ian Clark

Leland Goss

Sean Hagan

Jim Ho

Rosa Lastra

Rodrigo Olivares-Caminal

Harriet Territt

Phillip Wood

Deborah Zandstra

John McGrath

Allen & Overy LLP

White & Case LLP

International Capital Market Association

Georgetown Law

Cleary Gottlieb Steen & Hamilton LLP

Centre for Commercial Law Studies

Queen Mary University of London

Jones Day

Clifford Chance LLP

Dechert LLP

Brian Gray

Venessa Parekh

FMLC Secretariat

FMLC Secretariat

#### Guest Speakers:

Anna Gelpern

Georgetown University

#### Regrets:

Francis Fitzherbert-Brockholes

Duncan Kellaway

Richard O’Callaghan

White & Case LLP

Freshfields Bruckhaus Deringer LLP

Linklaters LLP

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## **Agenda:**

### **1. Introductions**

- 1.1. Mr Manuelides opened the meeting. He noted that, with speakers' permission, the order of the topics to be discussed had been reversed.

### **2. OECD Transparency Initiative (Deborah Zandstra)**

- 2.1. Ms Zandstra reminded attendees of the Voluntary Principles for Debt Transparency published a year ago as a result of a Debt Transparency Working Group established by the Institute of International Finance (the "IIF"), which has liaised extensively with the G20. The Principles are not yet operational. Ms Zandstra noted that the International Monetary Fund (the "IMF") and the World Bank have been unable to take over the task of hosting the repository of data disclosures, which is one of the key recommendations of the Working Group. The IMF concluded that it would not be within its mandate to do so.
- 2.2. The Organisation for Economic Co-operation and Development (the "OECD"), with the support of HM Government and the IIF, has launched a Debt Transparency Initiative to operationalise the Voluntary Principles for Debt Transparency so that relevant debt data is collected, analysed and reported. The OECD has set up two bodies under this project. The first is of data users, comprising participants from the private sector to share data with the OECD as it creates its data site. The second is an advisory board that will examine how the Debt Transparency Initiative will fit in amongst other initiatives. The IIF is also required to report periodically on the initiative under the governance of the group of trustees of the IIF Principles for Stable Capital Flows and Fair Debt Restructuring under whose oversight the Voluntary Principles for Debt Transparency will also fall.
- 2.3. Ms Zandstra noted that concerns relating to data retrieval and inclusion in the project have arisen. The project has highlighted that, while banks are bound by confidentiality obligations in relation to loans, they frequently include a carve-out regarding the reporting of such transactions to auditors, regulators, etc. A similar carve-out might be required—and one is being prepared. Other concerns included determining how the data site could be used effectively together with other data sites run by the IMF/World Bank and the Bank of International Settlements so that data can be aggregated and facilitated. Ms Zandstra stated that several types of types of transactions are excluded from the Debt Transparency Initiative, which is focused on transactions with an original maturity of over one year. Finally, she noted that, while the initial proposal for the Debt Transparency Principles had

excluded the bond market, which was considered already to be reasonably transparent, owing to feedback from NGOs and the fact that the disclosure requirements are not very onerous, it is likely that bond dealer managers will be required to provide a matrix of information to the OECD also if they are participating in the initiative.

- 2.4. Attendees noted that the direction of travel was positive but that developments were proceeding quite slowly. An attendee asked if the Loan Market Association (the “LMA”) would be publishing any template language. Ms Zandstra noted that the LMA has reviewed language being developed by the IIF and it would be made public before the Principles were operational.

### 3. *How China Lends (Anna Gelpern)*<sup>1</sup>

- 3.1. Prof Gelpern introduced the paper surveying a 100 debt contracts between Chinese government and state-owned lenders and foreign governments. The research is a collaboration among economists, lawyers, international relations and political science scholars. She noted that there is divergent thinking about how China lends to low- and middle-income countries. The aim of the paper was to examine the terms of China’s lending. Prof Gelpern provided an overview of the findings, most notably including broad confidentiality clauses that put obligations primarily on the debtor; repayment accounts that put revenues outside the debtor’s control; unique clauses that prevent the debtor from including the loans in any Paris Club or comparable restructuring exercises; and cross-default links to apparently unrelated contracts between the sovereign debtor and various PRC entities. Overall, Chinese lenders appear to use muscular commercial safeguards to secure repayment. She noted, in conclusion, that some of the Chinese lenders’ terms appear to be in tension with its commitments/rhetoric in the G20 (Debt Service Suspension Initiative (“DSSI”) and the Common Framework for Debt Treatments beyond the DSSI. It is important to avoid a collateral race among commercial and official lenders, in which the debtor might be caught to its detriment.
- 3.2. An attendee noted that the contracts studied in the report predated the DSSI and Common Framework. In the future, China may be unable to include “no Paris club” clauses in contracts with certain debtor nations. Attendees agreed that it would be interesting to see how nuanced the Chinese response would be. A discussion followed on the difficulty of

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<sup>1</sup> Anna Gelpern, Sebastian Horn, Scott Morris, Brad Parks, and Christoph Trebesch, *How China Lends A Rare Look into 100 Debt Contracts with Foreign Governments*, (March 2021), available at: [https://docs.aiddata.org/ad4/pdfs/How\\_China\\_Lends\\_A\\_Rare\\_Look\\_into\\_100\\_Debt\\_Contracts\\_with\\_Foreign\\_Governments.pdf](https://docs.aiddata.org/ad4/pdfs/How_China_Lends_A_Rare_Look_into_100_Debt_Contracts_with_Foreign_Governments.pdf).

establishing all-in cost of bundled contracts to the borrower, on collateralisation and negative pledge clauses, set off, etc, on which the IMF could provide guidance.

**4. Any other business**

4.1. No other business was raised.