

## Legal Clause Library & Legal Data Standards

D2 Legal Technology (D2LT) and International Securities Lending Association (ISLA) White Paper

In partnership with:



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# 1 Executive Summary

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**It has now been seventeen months since the International Securities Lending Association (ISLA) launched “An Agenda for Change”, a joint white paper in collaboration with Linklaters that described the state of the industry as being at an inflection point, where opportunities for digital transformation coincide with changes to market and regulatory environments. Current manually intensive operating models are not sustainable, and events such as the COVID-19 pandemic are increasing the urgency for market participants to embrace the digital transformation agenda as the rate of change to the business environment continues to gather pace. Enhanced technology and data are becoming increasingly pervasive across all aspects of day-to-day life, and these have become critical elements to conducting business.**

Documentation plays a crucial part in the securities lending industry, creating a set of obligations between the contracting parties and recording the terms of their transactions and relationship. Accordingly, any successful digital transformation requires a focus on documentation. ISLA has therefore mobilised a Clause Library and Taxonomy project in respect of the GMSLA documentation suite.

Legal agreement clause libraries and taxonomies create the framework and the structured data within which to embrace documentation workflow, automation, and data analytics. A proof of concept of an initial seven GMSLA clauses successfully demonstrated the utility of enumerating business outcomes for each clause with their associated variants and variable allowable values. Due to continuing ISLA membership support (as confirmed through the November 2020 ISLA Legal Survey), a delivery plan has been set out for 2021 which completes the Clause Library and Taxonomy project for the GMSLA documentation, and progresses the CDM to a minimum viable product for securities lending, unlocking the opportunities for business value.

This will be a game-changing achievement for the industry enabling the data and technology components of member operating models to progress. However, further steps are required if members are to realise the benefits and embrace a digital future.

This paper focuses on digital data standards created by the Clause Library and Taxonomy project through a look at the key aspects of the securities lending industry:

- how the industry is positioned today;
- a vision for what the strategic state looks like;
- the steps required to achieve this strategic state;
- how best to achieve adoption across the industry; and
- immediate next steps.

It concludes that in an increasingly data-driven world, firms are moving to operationalise their business through automating data-driven processes, allowing greater efficiency, scalability, and resilience through the medium of data. Key to this is the representation of contractual terms and the expression of business outcomes that they represent in a manner which follows a consistent, predictable, and structured data format.

As with any change programme, adoption is key. The size of the prize for market participants should not be underestimated, and includes a wide range of business benefits such as the optimisation of business processes.

This journey is worth taking and requires continued further collaboration between ISLA and its members. To share your ideas or to get involved in this exciting digital transformation programme, please contact [regtech@islaemea.org](mailto:regtech@islaemea.org).

## 2 Introduction

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**The International Securities Lending Association (ISLA) is a leading industry association representing the common interests of securities lending and financing market participants across Europe, Middle East, and Africa. Its geographically diverse membership of over 160 firms includes institutional investors, asset managers, custodial banks, prime brokers, and service providers.**

Working closely with its global membership as well as regulators and policy makers, ISLA advocates the importance of securities lending to the broader financial services industry. It has supported the development of an enabling framework for the industry, by playing a pivotal role in promoting market best practices and processes. Crucial to this has been ISLA's creation of the Global Master Securities Lending Agreement (the "GMSLA"), with 2000, 2010, and 2018<sup>1</sup> forms of this agreement available for use by market participants. The success of these documents can be seen through their prevailing use globally for the documentation of the relationships between market participants as master netting agreements. These forms of the GMSLA are supported by an annual netting enforceability review through commissioned legal opinions in conjunction with the International Capital Markets Association (ICMA) in over 65 jurisdictions globally, orchestrated through ISLA. Over the past two decades, ISLA's stewardship of this documentation architecture has seen it work with its members to maintain this documentation framework to meet the evolving requirements and needs of the industry, including the development of various addendums and annexes. Together with items such as netting opinions, this framework has provided legal certainty, clarity, and efficiency for securities lending market participants. That said, the form in which the preprint versions are provided and used by market participants has barely changed over the past two decades, despite new market and regulatory expectations.

The world is changing, and there is broader recognition of the need for market infrastructure, data governance, and process/ documentation change. This has been reinforced through regulations such as SFTR, CSDR, QFC recordkeeping, living wills, and BCBS239<sup>2</sup>. Similarly, there are new imperatives to do more with less without compromising risk; the industry needs to continue to evolve. Documentation remains key to the effective functioning of the market. Securities lending transactions are essentially a series of contractual obligations created by the written word forming the contracts between the parties (i.e., the GMSLA preprint, any relevant schedules and annexes, as well as transaction-specific terms agreed by the parties in various ways).

Whereas many of their core terms have largely remained constant, there has been an ever-increasing number of variants in the specific clauses used within the documentation framework, increasing the time taken for negotiation and onboarding of new client relationships. Where these variances have different commercial and operational effects, this has led to a need for often highly manual bespoke business processes to monitor and respond to the contractual obligations in place. The rapidly evolving regulatory landscape that has emerged since the events of the financial crisis has put further strain on the processes and systems reliant on the specific legal agreement terms negotiated and their management. However, most of these documents are in hard copy form, or at best, scanned as image-based documents, forcing an analogue reality.

<sup>1</sup> The 2000 and 2010 forms are based on title transfer of collateral from the borrower. The 2018 form is based on the 2010 form, making modifications to provide for the borrower to give collateral by way of security interest rather than by title transfer.

<sup>2</sup> Please see the glossary on page 29. Capitalised terms that are undefined in this paper are as defined in the GMSLA documentation.

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## 2 Introduction

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The market and world we find ourselves in is a very different place from that twenty years on from the publication of the first version of the GMSLA. Digitisation, and increasingly digitalisation, is very much on the agenda, with the increasing use of data to unlock business value supporting the use of systems to automate tasks, allowing more to be achieved faster and cheaper and with greater control. The replacement of manual tasks has been accelerated through the COVID-19 pandemic, forcing the replacement of manual steps with more digital steps that are better suited to the remote-working and distributed workplace. Wet-ink and hard copy papers are no longer as practical as they have been in the past.

Smart contracts have the ability, in the current decade, to allow for the written contract-based industry to embrace the advantages of the data economy with their ability to record and perform the obligations of a legally binding contract. A smart contract can be defined as:

*“an automatable and enforceable agreement. Automatable by computer, although some parts may require human input and control. Enforceable either by legal enforcement of rights and obligations or via tamper-proof execution of computer code.”<sup>3</sup>*

ISLA members cannot embrace this increasingly digital and data-driven world without common market data standards, not only in relation to onboarding, trading, risk management and collateral, but the documentation itself.

To unlock business value in our vision for the future, it is important that the legal documentation now evolves to drive digitalisation according to such common market data standards. This can be done effectively through the curation of a clause library and taxonomy (the GMSLA Clause Library & Taxonomy) which will lead to a number of practical use cases.

The digitalisation of the documentation is a crucial building block of the digital vision and agenda. ISLA have published a series of related papers, notes, and responses to regulators to date that support this, in particular, the “Digital Future for Financial Markets” letter (July 2020)<sup>4</sup>. This was a letter from eight leading trade associations, including ISLA, ISDA, ICMA, the LBMA and others to the Financial Stability Board,

International Organization of Securities Commissions and the Basel Committee on Banking Supervision. It asserts a joint commitment to defining and promoting the development of a digital future for financial markets. This recognises the need to adopt common data and processes across the industry, allowing for the consistent aggregation of global financial data and more comprehensive risk assessment of supervised firms, including greater alignment in terms of contracts and the recognition of three core areas: “Standardisation, Digitisation and Distribution”.

ISLA took a number of practical steps in 2020 to start to develop its vision for the future of securities lending documentation, allowing members to play their part in ensuring the bright future of the industry, leveraging FinTech and LegalTech solutions to achieve greater successes. This included the setting up of a Digital Steering Group, which oversaw two successful proof of concepts for the Common Domain Model (CDM) and the GMSLA Clause Library & Taxonomy.

The success of the ISLA journey to transform in readiness for the new digital agenda, is predicated on aligning these different components of data, process, and technology into a single coherent strategy.

This paper seeks to detail the journey forward from this work, focusing specifically on the common data standards for documentation and how they can be leveraged to optimise process and technology. As always, we strongly welcome your engagement, thoughts, and contribution to the exciting path ahead.

<sup>3</sup> Clack CD, Bakshi VA, Braine L. Smart Contract Templates: foundations, design landscape and research directions. Revised 15th March 2017. Available from: <https://arxiv.org/pdf/1608.00771.pdf>

<sup>4</sup> <https://www.islaemea.org/news/joint-associations-digital-future-letter/>

# 3 Today's Position/Market

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## Background

**Securities lending developed from the 19th century UK securities trading markets, involving gilt-edged securities sourced by intermediaries being borrowed by market makers. The origins of the modern securities lending industry can be traced back to the immediate post-war era, when securities lending developed to support settlement failures. It has been a tremendous success story, with exponential growth in borrowing, available assets, and revenue generation.**

The initially US-dominated securities lending market soon took off in Europe, with financial institutions heavily investing in borrowing and lending capabilities in Europe in the 1980s, and London becoming a major hub for executing and/or booking Asian trades. The rapid growth at this time was based on teams of people ensuring that operational matters were managed as required. It was supported through several market standard agreements for documenting securities lending transactions, although many of these were based on the type of securities being borrowed. Practices such as the marking-to-market of loans varied significantly across market participants, and in a pre-straight-through processing environment, every cash collateralised loan was, for example, in the case of equities, processed manually on a free-of-payment basis, with cash posted by the borrower one day before settlement<sup>5</sup>.

The increasing use of European cash collateral added monitoring requirements for timely matching and settlement, and the management of manufactured dividends and coupon collection required significant manual work to manage their complexity.

Demand from hedge funds via prime brokers dramatically increased the volume of securities lending transactions and a boom in revenues, driving up the resourcing of the industry. By the end of the 1990s, market participants realised the unsustainability of the manual processes, and heavily invested in

both vendor and in-house systems to facilitate straight-through processing. In May 2000, ISLA published its Global Master Securities Lending Agreement (the "2000 GMSLA"), which effectively combined a number of the previous security-type based master agreements. This heavily assisted with the success of straight-through processing, aligning the disparate terms across the various master agreements into a single document.

The new millennium brought a further rapid growth of securities lending transactions and the launch of platforms and solutions such as Pirum and EquiLend, the latter being a centralised solution (initially a consortium of ten banks) for loan trading and post-trade services. The growth of this industry was, however, heavily affected by the global financial crisis and the collapse of Lehman Brothers in mid-September 2008. As the administrators were appointed to Lehman Brothers International Europe (Lehman), most securities lenders immediately declared an event of default and lending agents took the approach of selling collateral in order to buy back lent securities in the market. This restored the position of lenders, and any net exposure to Lehman was then calculated as the cost of repurchasing the lent securities less the funds raised with the sales of collateral. Given the usual over-collateralisation with securities lending, most lenders were left with a surplus.

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<sup>5</sup> Noting that "pre-pay" still occurs in more limited cases where required due to the relevant time zones and cut-off times.

### 3 Today's Position/Market

Those with a deficit were left with a claim against Lehman in administration, however ISLA believes few lenders suffered material losses, as they were able to claim on indemnities from their agents. In fact, the GMSLA 2000 showed its importance through its operation during this global financial crisis.

A significant drop in the securities lending market followed the Lehman insolvency as well as a downsizing of the hedge fund industry, estimated at 15-30% in terms of volume of securities lent. Haircuts were increased, with a reduction in the range of collateral that lenders were prepared to accept, and of the securities being lent themselves, with an increased focus on counterparty risk. The Financial Stability Board ("FSB"), that was established in 2009, has taken a prominent role in looking at the strengthening of oversight and regulation of the industry in the post-financial crisis era, especially to address "shadow banking" risks in securities lending and repo markets. Based on their initial recommendations to strengthen oversight and regulation of the "shadow banking" system as set out in their report submitted to the G20 in October 2011, the FSB set up the workstream on securities lending and repo (WS5) to assess financial stability risks and develop policy recommendations to strengthen regulation of these markets.

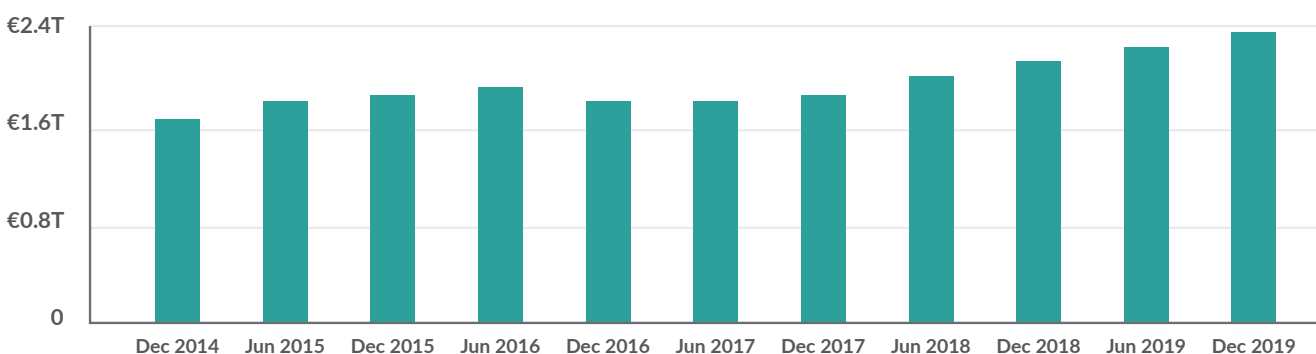
In November 2012, the FSB published its consultative document, "A Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos", which identified the financial stability issues (or shadow banking risks) in securities lending and repo markets, and set out thirteen policy recommendations to address such risks. These included improvements in regulatory reporting and market transparency, regulation of securities financing, as well as policy recommendations related to structural aspects of the securities financing markets such as central clearing.

This and other regulatory body work have led to several key industry regulations such as SFTR and CSDR, as well as broader regulation such as the requirement for living wills for systemically important financial institutions as part of recovery and resolution planning.

The raft of regulatory reform measures post the 2008 financial crisis have placed a considerable burden on market participants. The increased cost of supporting pre- and post-trade activities and complying with the new regulatory obligations, alongside reduced profit margins in the business, is not sustainable. The complicated interaction between systems and processes, both internal and external, is creaking under the weight of a decade of change and has been identified as now needing time and financial commitment to evaluate and replace, with a need to be approached in a collaborative manner across the market. This call to action and its response have begun, especially within the operations and trading areas, continuing the good work to straight-through processing since the late 1990s. It is however time now to consider the approach to securities lending legal agreement contracting and management processes that are required to sustainably support the changed securities lending landscape and infrastructure, an area that has seen little change from a purely manual one.

Despite the post-crisis regulatory reform, asset price inflation has pushed equity values higher and, with a broadly flat government bond picture, the ISLA Securities Lending Aggregate (see Figure 1) posted a marginal 3% increase, rising to €2.3 trillion as at the end of 2019. The demand for securities lending in value terms has continued to grow and the benefits available to market participants of improving the approach to securities lending documentation continues to be significant.

Figure 1 - ISLA Global Securities Lending Aggregate\*



\* The ISLA Global Securities Lending Aggregate represents the value of securities on-loan globally across all asset classes. It is compiled from data taken from our various data partners (source ISLA).

# 3 Today's Position/Market

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## Securities Lending Legal Agreement Framework

The current securities lending legal agreement framework was fundamentally and successfully established in 2000, with the publication of the 2000 GMSLA<sup>6</sup>. This standardised documentation architecture was intended to allow market participants to execute multiple transactions under one master agreement across security types, rather than negotiating lengthy agreements for each transaction and take advantage of netting provisions which are essential to manage overall credit exposures as the market grew. While standardising the basic terms in a preprint form, it allowed for the addition of customisation of those terms, and any additional terms the parties might identify in a Schedule to the preprint form. This approach was incorporated into the growth of the ISLA documentation suite for legal agreements, extending to other legal agreement types such as the Agency Annex, an Addendum for Pooled Principal Agency Loans, and various Tax Addendums.

There have been subsequent versions of the preprints created and successfully used by the industry, namely the 2010 and 2018 forms of the Global Master Securities Lending Agreement (the "2010 GMSLA" and "2018 GMSLA" respectively), noting that the 2018 GMSLA is based on the 2010 with modifications made to provide for the borrower to give collateral by way of security rather than by title transfer.

The GMSLA has been shown to be incredibly durable and has withstood the test of time, including the challenges presented by the global financial crisis. There have been very few challenges to the core language used in these preprint forms,<sup>7</sup> and crucially, none of these challenges have fundamentally undermined the enforceability of the GMSLA. It has:

- achieved a high degree of market acceptance globally;
- increased efficiency and reduced transaction costs;
- reduced basis risk between different forms of agreement for different security types; and
- promoted market liquidity.

Despite this, many legal agreements are still customised between parties, often a reflection of a market participant's individual form of templates or "house style". Even where customisation is required for specific business, regulatory, or operational reasons, this customisation is achieved in a bespoke manner, or without an appreciation of the true cost of the exact detail of the contractual obligations being entered into that may not be supported by internal processes and systems. In some circumstances, bespoke conditions may not be communicated to operations departments and therefore cannot be adequately managed and given effect to (if it impacts day to day business) or will be at risk of not being performed/catered for in the event of any agreement triggers. This can create significant operational, credit, and reputational risks.

Securities lending markets today are of course very different to the markets before the global financial crisis. In response to the regulatory changes instigated in its aftermath, there has been a necessary change to legal agreement documentation, ranging from putting new legal agreements in place to large re-papering exercises in relation to existing ones. This has been further supplanted by a requirement for legal agreement data for the purposes of regulation in respect of, inter alia, trade and risk reporting, BCBS 239<sup>8</sup> and Qualified Financial Contracts record-keeping requirements.

As an industry, we have met these challenges through the use of updates to preprint forms, various annexes/addendums, protocols and wording provided by working groups. However, we have put these in place without formally addressing the types of clauses contained within these documents by way of a standard framework. The aggressive mandate of change over the last decade did not allow the industry to pause, take a step back, and assess the strategic next generation of legal agreement processes and management required. However, over this period, the proliferation of unnecessary bespoke clause wording is no longer sustainable and impacts not only legal and documentation teams, but increasingly those involved in wider pre- and post-trade processing and management.

<sup>6</sup> Prior to this, there were a number of master agreement forms, such as the GESLA (typically used for lending UK gilt-edged securities), the MEFISLA (mainly used for lending UK securities excluding gilts) and the OSLA.

<sup>7</sup> In particular, the challenges to the close-out provisions of the GMSLA.

<sup>8</sup> <https://www.bis.org/publ/bcbs239.pdf>

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## 4. A Glimpse of What a “Strategic State” Looks Like

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**Written<sup>9</sup> legal agreements are crucial to documenting and evidencing the intention of trading parties. They force consideration and detailing of the operational aspects of transactions, expectations regarding the transaction such as those defining quality, payment, each party’s responsibilities, and how a firm may deal with certain events that may or may not occur during the intended trading relationship. The agreement utilises the legal framework that exists to allocate liability and have a form of recourse, should the transactions and relationship not proceed as anticipated or run into issues.**

Historically, the legal profession has tended to focus on the form of words/legalese when drafting, with only secondary emphasis given to how these clauses could be understood and consumed by non-lawyers who are managing business and operational processes.

However, in an increasingly data-driven world, it is no longer the written word that is king. Firms are moving to operationalise their businesses through automated and data-driven processes, and accordingly, key commercial and operational terms as well as risks monitored within legal agreements need to form part of the business process if they are to play a part in optimising the business decision-making, as well as management of commercial risks and operations. The use of technology and systems increasingly impacts those business processes, allowing greater efficiencies and scalability through the medium of data. Many downstream business processes and systems have embraced this opportunity, but until the key data elements of the legal agreements are brought to the fore, there is a stunting of business through the legal contracting and management process, missing significant revenue opportunities.

We are on an inevitable journey to data-orientated legal agreements, with a representation of the written contractual terms in a manner that follows a consistent, predictable, and structured data format. This is required by the business and operations, who cannot each time reach for the written contract when undertaking their day-to-day activities. As systems increasingly automate those downstream processes, the legal agreement terms are required as data inputs.

The traditional contracting process relies upon a common understanding of contractual language, the rules of contractual interpretation, contract (and other relevant types of) law, and regulation. Legal agreement “defined terms” are applied to make interpretations of the wording easier, the legal agreements themselves more precise and concise, reducing the risk of ambiguity. As such, to move from current word-based contracts to those which allow for the automation and application of the data elements to the wider business, meaning must be given to the structured data variables and allowable values of those variables. Only one of the parties to the contract (although this may involve multiple internal stakeholders with multiple objectives and requirements) needs to provide this meaning if the data form is only to be used by that side for its own purposes. Where both parties to the contract are to be bound by the way in which the structured data is represented however, then its definitions must be mutually agreed (moving into areas of “computable contracts” and “smart contracts”).

<sup>9</sup> As opposed to oral contracts

## 4. A Glimpse of What a “Strategic State” Looks Like

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It can be quite difficult to agree (even where this is an internal single party exercise), on the representation and meaning of the structured legal agreement data. This is therefore often an exercise best undertaken on the basis of analysing a number of actual natural language legal agreements, in order to identify the relevant variables and their possible allowable values<sup>10</sup>. By applying real commercial examples, the process of defining the meaning of the data becomes more straightforward, as do the processes for identifying and handling exceptions. Indeed, the use of existing data standards can simplify the process, as they, through their development, have effectively already gone through such a process. This is an efficient manner in which to provide meaning to structured data, with the added benefit of broader acceptance and operability.

Contract negotiation platforms can be used in order to agree the commercial variables, and seamlessly convert between the natural language legal agreement and an accompanying structured data form. The strength of such platforms lies in their ability to guide as well as constrain the manner in which the legal agreement information is entered, or at least provide agreed options with known eventualities. This in turn allows for key commercial terms and outcomes of the wording to be identified as structured data at the outset, rather than requiring its conversion at a later date. It does however require agreement between the contracting parties to the various constraints imposed, and as such, is best facilitated by a trusted third party, such as an industry body or trade association. Additionally, the workflow and management information such platforms can provide is critical, especially given the role legal agreements such

as the GMSLA play in facilitating safe and efficient securities lending transactions and managing various papering and re-papering exercises.

Such contract negotiation platforms can be a catalyst for the adoption and move to data-oriented contracting and computable contracts<sup>11</sup>. An essential part of this is recognising that there are a number of outcomes that are being negotiated between parties when putting a legal agreement in place. This needs to be separated out from the specific wording and legalese used. A focus on these contractual outcomes can unlock a number of different business benefits, a consequence of the analytical processes applied to align the wording with its outcomes. For example, the identification of relations between contractual obligations (such as assets that might be received under a particular transaction and posted under another) within a contract portfolio, would allow for business decisions to be made as to how to optimise them. Risks can be better monitored, such as counterparty credit provisions in contracts, which have a significant impact on the management of a commercial relationship. In this case, it is possible to combine the contractual data with market and transactional data, such as asset pricing and counterparty credit ratings, in order to put business perspective to the commercial terms and their business impact.

<sup>10</sup> Accordingly this has underpinned the work undertaken as part of proof of concept of the GMSLA Clause Library and Taxonomy project.

<sup>11</sup> Surden, H. (2012) Computable Contracts, 46 UC Davis Law Review, 46 pp. 629

## 5. Steps Required to Unlock Business Value through Legal Change to Achieve this Strategic State

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**Legal agreement and clause taxonomies create a framework in which to work with legal documentation and manage the contractual obligations they contain, allowing classification to be conducted within the framework of that taxonomy.**

Without a clause taxonomy there is no standardised way, in the legal context, of reviewing a set of contractual obligations (or the information within them) contained in a legal agreement, to then manage the business, regulatory, and operational implications such contractual obligations have. Although taxonomies are a well-established approach to categorising and linking to business processes, these have only been used to a limited extent by market participants for legal agreement management, and typically created individually (often for a particular department or specific use within a firm). They do, however, form the foundation for optimising value from business processes and unlocking value through (legal) change.

A legal agreement-type taxonomy classifies legal agreements to support granular, relevant, and reliable document referencing and data retrieval. These can then provide the basis for appropriate data modelling of these legal agreements and their contents. For example, it might recognise the following preprint types of the GMSLA:

- ISLA Global Master Securities Lending Agreement (May 2000 Version);
- ISLA Global Master Securities Lending Agreement (January 2010 Version); and
- ISLA Global Master Securities Lending Agreement (Security Interest over Collateral – 2018 Version).

It might also recognise that there are other classifications of agreements, such as in the GMSLA context:

- Preprint Form;
- Schedule;
- Agency Annex;
- Addendum for Pooled Principal Agency Loans;
- Amendment of a Schedule; and
- Amendment and Restatement of a Schedule.

The lack of a consistent taxonomy within a firm can lead to issues with respect to business optimisation, regulatory reporting, and operational management of the contractual obligations that ultimately represent securities lending transactions. For example, there have been instances where firms have had legal agreement management systems with a long list of agreement types, where a legal agreement can be classified with only one tag, which might be “2000 GMSLA”, “GMSLA”, or “Amendment Agreement”, whereas some legal agreements may in fact meet all three of these classifications. This is a common example of the lack of legal agreement data governance and definitions of agreement types that is pervasive throughout the industry. The position is further complicated by agreement types within the ‘Documentation Architecture’, such as protocols, and inconsistent approaches to confirming securities lending transactions which may amend certain trade-specific terms of the GMSLA (such as to amend the operation of the ‘Settlement Netting’ clause in respect of a particular ‘Transaction’, or to add an ‘Event of Default’).

## 5. Steps Required to Unlock Business Value through Legal Change to Achieve this Strategic State

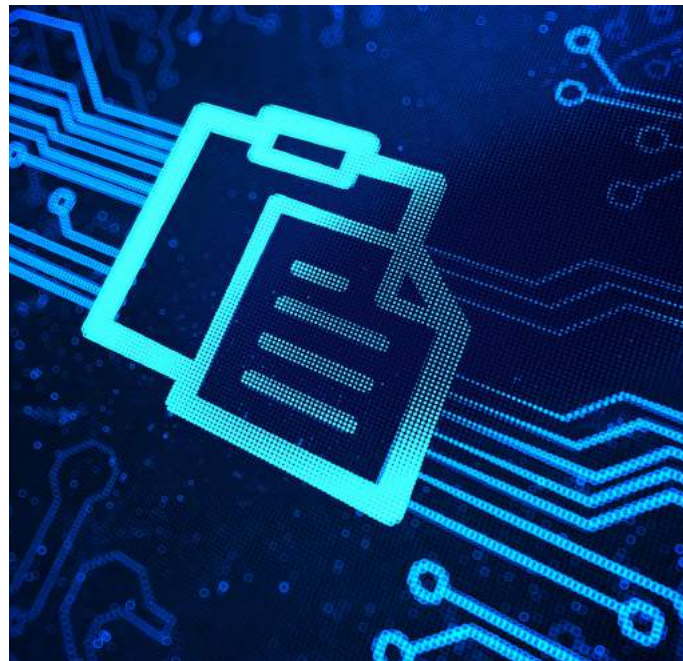
Although understanding the legal agreement types is important, for example to understand whether a collateral arrangement operates on the basis of title transfer (such as under the 2000 GMSLA or 2010 GMSLA), or a pledge (such as under the 2018 GMSLA), there is also a business, regulatory, and operational need to understand the details of the contractual obligations contained within a legal agreement type.

The text within legal agreements is typically arranged into sections (or in the context of the GMSLA preprint and its Schedule, “paragraphs”). This helps to identify the physical location of particular paragraphs, sentences, and words within the legal agreement. These may not necessarily be physically located together. Although a lawyer will typically have an understanding of what certain “clauses<sup>12</sup>” mean, for example with a “Termination” clause, there doesn’t tend to be a clearly published reference definition of what is meant by this. Other roles in the organisation such as credit officers may need to see such provisions and it might be helpful if they could be signposted to where such provisions reside.

When communicating information about relevant clauses to those impacted by the contractual obligations that make up a legal agreement, this lack of clause-type definitions can result in misunderstandings, and ultimately poor business decisions regarding, for example, counterparty risk, inaccurate regulatory reporting, and operational management errors.

For example, the nomenclature used in the GMSLA may mean that one may not realise that paragraph 9, “Failure to Redeliver” of the 2000, and “Failure to Deliver” of the 2010 and 2018 GMSLA do not refer to an event of default, but rather the range of actions available in relation to a single transaction or the ability to give notice of an event of default.

Similarly, when setting out the “Parties” to a GMSLA, some market participants specify the branch or office through which they are operating as part of their name, however this branch or office needs to be specified under the “Designated Offices” clause. Failure to align these two provisions could lead to ambiguity, which could be compounded by the “Places of Business” clause which is often the same location as the “Designated Offices” but relates solely to the “Business Day” definition.



Legal agreement clause taxonomies seek to address these issues by defining what is meant by a particular clause, typically by reference to the outcomes (business, regulatory and/or operational) of the clauses. For example, a legal agreement clause taxonomy for the GMSLA in relation to events that may lead to the termination of the agreement, might consist of the following clauses:

- Failure to Pay or Deliver Collateral
- Failure to Comply with Manufactured Payment Obligations
- Failure to Pay in relation to Mini Close-Out
- Insolvency
- Misrepresentation
- Inability to Perform
- Transfer of Assets
- Default/Suspension/Expulsion from an Exchange or Prohibited from Dealing
- Failure to Perform

<sup>12</sup> Legal wording relating to a particular theme and outcome is referred to as a “clause” for the context of this paper.

## 5. Steps Required to Unlock Business Value through Legal Change to Achieve this Strategic State

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For example, an “Insolvency” clause might be defined, in relation to GMSLA, as “Wording detailing insolvency-type events allowing an Event of Default (for example, through the giving of notice), to be triggered”. Such a clause would therefore, within a particular executed agreement with a counterparty, include all wording related to this, such as the amendment suggested by the Swiss GMSLA industry legal opinion:

- (ii) Deleting sub-clause (iv) of the GMSLA 2000 and sub-clause (d) of the GMSLA 2010 of clause 2.1 “Act of Insolvency”, respectively, in its entirety and replacing it with the following wording:

"[(iv)/(d)] the presentation or filing of a petition in respect of it (other than by the other Party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency or the commencement of any proceeding by any competent authority (being a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over a party in the jurisdiction of its incorporation or establishment or the jurisdiction of its head office) alleging or for the bankruptcy, winding-up or insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition not having been stayed or dismissed within 30 days of its filing (except in the case of (1) a petition for winding-up or any analogous proceeding or (2) the opening of bankruptcy ("*Konkurseröffnung*") or the opening of composition proceedings ("*Eröffnung eines Nachlassverfahrens*") under Swiss law in respect of which no such 30 day period shall apply);"

Related to this “Insolvency” clause, is the “Automatic Early Termination” clause. This might be defined as a “clause specifying whether there is an automatic acceleration of all Loans upon the occurrence of certain insolvency related events”.

It should be noted that the same business outcome for this clause might be drafted in different ways by market participants in the Schedule. For example, under the 2010 GMSLA, this might be drafted as:

### Example 1

#### 5. EVENTS OF DEFAULT

Automatic Early Termination shall not apply in respect of Party A  
Automatic Early Termination shall not apply in respect of Party B

Or as

### Example 2

#### 5. EVENTS OF DEFAULT

Automatic Early Termination shall not apply in respect of Party A nor Party B

noting that they both have the same business outcome.

## 5. Steps Required to Unlock Business Value through Legal Change to Achieve this Strategic State

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In contrast, each of the below would achieve a completely different business outcome:

### Example 3

#### 5. EVENTS OF DEFAULT

Automatic Early Termination shall not apply in respect of Party A

Automatic Early Termination shall apply in respect of Party B

### Example 4

#### 5. EVENTS OF DEFAULT

Automatic Early Termination will not apply in respect of Party A.

Automatic Early Termination will not apply in respect of Party B.

Notwithstanding the above, where a party is governed by a system of law which does not permit the termination of one or more Loans to occur following an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party, then Automatic Early Termination shall apply to that party.

These are all examples of wording that can be found in 2010 GMSLA Schedules.

It should be noted that although such wording is normally inserted into Paragraph 5 of a GMSLA Schedule, this is not always the case. Furthermore, there will be variances regarding how this wording operates based on the preprint form being used. For example, under the 2000 GMSLA, the preprint wording is such that the same business outcome in Example 1 and Example 2 above in fact needs to be drafted in the following manner:

8. Paragraph 14.1 of the Agreement is amended as follows:

(i) The preamble of Paragraph 14.1 is amended and restated as follows:

“14.1 Each of the following events occurring in relation to either Party (the "**Defaulting Party**", the other Party being the "**Non-Defaulting Party**") shall be an Event of Default for the purpose of paragraph 10 but only where the Non-Defaulting Party serves written notice on the Defaulting Party:-”

and

(ii) Paragraph 14.1(v) of the Agreement is amended and restated as follows:

“(v) an Act of Insolvency occurring with respect to Lender or Borrower;”

This is because the 2000 GMSLA preprint provides for “Automatic Early Termination” to apply to the parties as the standard default position.

The clause taxonomy, when developed for key clauses in a legal agreement such as the GMSLA, allows for such variants of the wording to be identified and classified. It also identifies variants which might achieve a different business outcome instead.

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# 5. Steps Required to Unlock Business Value through Legal Change to Achieve this Strategic State

Without a clause taxonomy, it is not easily possible to classify such alternative variants properly. Critically, once this classification has been done, business processes that are impacted by certain variants of clauses can be aligned. This allows for the management of relevant contractual obligations through legal agreement data. Institutions could potentially assess what are the key business outcomes across their legacy portfolio of documents, even if those documents vary as we see with the different GMSLA documents.

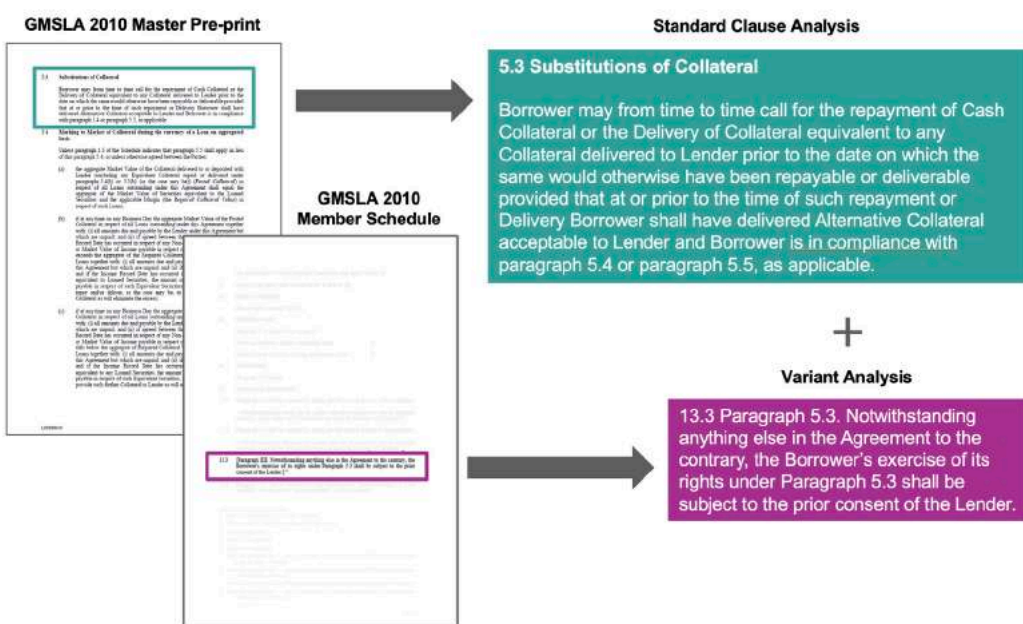
There is an unsustainable degree of complexity in today's securities lending ecosystem, putting market participants under considerable strain. This derives largely from a lack of standardisation of business processes, which are driven ultimately by the contractual obligations contained in the legal agreements. In some cases, the different outcomes are required, however in others, they serve little or no beneficial purpose to either party or to the industry.

Although it is theoretically possible to manually catalogue and map each variant of a clause found in a firm's executed legal agreement, the sheer number of variants makes this a difficult task. Such a cataloguing exercise, across the industry, would

be even more onerous. So, although this might conceivably be done for legacy legal agreements, it would clearly be beneficial to proactively try and ensure a more consistent and standardised way of drafting a particular clause, aligned to such clause's intended outcome. This is the very essence of the foundational blocks being sought to be implemented through the GMSLA Clause Library & Taxonomy project.

Taking a few steps back, the first step of the project has been to robustly identify a "Clause Taxonomy" for the GMSLA, essentially the identification of the clauses that might exist in a GMSLA Schedule. Such clauses have been defined so as to allow any executed GMSLA to be taken, and for it to be possible to identify the particular wording that relates to that clause. Taking a large set of GMSLA Schedules, the wording was tagged into its constituent clauses, which when applied as an iterative tagging and assessment process, enabled a clause taxonomy to be defined. The key objective of this process was to create a clause taxonomy that would be identically repeatable, given the clause definitions and taxonomy, to identify the relevant clause wording and its location (possibly across multiple paragraphs and sections of documents forming the legal agreement).

Figure 2 – Application of the Clause Tagging Process



## 5. Steps Required to Unlock Business Value through Legal Change to Achieve this Strategic State

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As an initial proof of concept, a limited number of seven pilot clauses were selected<sup>13</sup>, allowing both the process and its intended outcomes to be assessed across a range of clause types (such as complexity, variance, and business processes related to the clause).

The construction of this clause library for clauses in a legal agreement provides the foundations for the following welcome developments for the industry:

### (1) Document Negotiation Platforms

The process of negotiating legal agreements such as the GMSLA can often be inefficient and time consuming. Negotiation platforms allow the opportunity to automate the creation and delivery of legal agreement documentation, and negotiate and execute it with multiple counterparties simultaneously, by focusing on intended business outcomes. Using workflow and providing appropriate data and management information analytics, the efficiency of the process, particularly in the face of aggressive regulatory (re-)papering deadlines can greatly assist market participants.

Such platforms rely on clause libraries to populate the various templates (essentially the proforma documents for negotiation that operate together with the published GMSLA preprints).

Furthermore, such platforms assist with the adoption of standardised wording and ways of drafting (e.g., location of clauses), although they also allow departure from such standards where necessary and required.

### (2) Aligning Business Processes and Empowering LegalTech Solutions and Downstream Systems

The standardisation of outcomes for clauses and their variants allows business processes reliant on the specific nature of the contractual obligations contained within legal agreements, to be managed through the development of APIs and systems built against the nature and outcomes of those contractual obligations. Clauses resulting in non-standard outcomes can be identified as such, and exception management processes can be used to deal with them.

It should be noted that to truly unlock the potential business value here, it is critical that the work is aligned and closely co-ordinated with the Common Domain Model initiative, which has been at the centre of the project approach.

### (3) Legal Agreement Data Models

Increasingly, it is critical that firms can represent and make decisions in relation to their legal agreement portfolio and their constituent contractual obligations, through data and systems, be it capital, collateral, liquidity, counterparty risk management, regulatory reporting, or for operational reasons.

By identifying the key outcomes of clauses, a fundamental step has been taken to create an industry legal agreement data model.

### (4) Smart Contracts

Several different types of clauses exist within legal agreements, such as operational and non-operational clauses, as well as clauses that might be susceptible to automation and self-execution, or indeed, those where this would be undesirable.

The clause taxonomy provides a much-needed standardised way of identifying the clauses (and the relevant variants), which might be categorised as such, as well as the outcomes that would, where relevant, be automated, and those that would continue to remain manual in a distributed ledger/smart contracts environment.

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<sup>13</sup> Settlement Netting, Places of Business, Designated Offices, Parties, Party Acting as Agent, Aggregation and Automatic Early Termination



# 5. Steps Required to Unlock Business Value through Legal Change to Achieve this Strategic State

To ensure the clause libraries provide the intended benefits listed above, the clause taxonomy for the proof of concept was created based on a number of fundamental design principles (see Appendix).

The variants for the phase one clauses were identified through the review of a large set of executed GMSLAs<sup>14</sup> and then through a series of ISLA working groups which sought to identify key variants by focusing on outcomes of the clauses that were appropriate to define as being part of the standard clause taxonomy.

It should be noted that the variants for a particular clause in the legal agreement clause taxonomy can further be viewed through the lens of containing both legal prose, as well as variables. Each variable has an identity (a unique name), a type, and may (but need not – although technically this might be viewed from a computational perspective as a null value) have a value. It is also possible for certain variables to be dependent on other variables, the specific clause variant(s), the presence or absence of certain clauses – or be related to variables in other legal agreements<sup>15</sup>.

Figure 3 – Consolidation Working Group Example for Aggregation



Accordingly, the proof of concept has successfully, for the covered clauses, identified not only the variants for a clause as part of an industry standard, but also the variables and any relevant interdependencies. These are all critical items from the perspective of the development of a legal agreement data model.

Based on the clause taxonomy variants identified, model wording that can be used to achieve the business outcomes they represent has been developed in the GMSLA Clause Library for these clauses. This presents a wonderful opportunity to standardise clause wording across the industry and minimise bespoke wording to where it is genuinely required. These sets of model wording provide the core of document templates that can be used by market participants, as well as document generation tools and negotiation platforms.

Through the standardisation of future clause wording used in legal agreements, the ability to map existing legal agreements to the clause library variants and the development of a legal agreement data model that can evolve from the GMSLA Clause

Library & Taxonomy, platforms (including market utility infrastructure) are empowered to support:

- the end-to-end negotiation process;
- resource management and optimisation (ranging from capital, liquidity and collateral);
- risk management (such as credit, counterparty and operational), as well as day to day operations (such as collateral management, client money and assets protection processes and transaction payments and deliveries); and
- regulatory reporting (such as for SFTR and recovery and resolution planning).

All of these systems require legal agreement information through the medium of structured and defined data, which is a critical benefit from the GMSLA Clause Library & Taxonomy, especially due to the ability for a standard to be developed in this regard, allowing for interoperability of systems both focusing in a particular area of the end-to-end securities lending trade process flow, or across different areas. The key to unlocking these benefits, as with any standard, is its adoption by market participants.

<sup>14</sup> This sample set ran into hundreds of diverse GMSLA Schedules, covering a broad range of preprint, counterparty types, and included review of a number of drafting templates and fallbacks for clauses kindly provided through engagement by members as part of the working groups.

<sup>15</sup> Clack, C., Bakshi, V. & Braine, L. (2016, revised March 2017) Smart Contract Templates: foundations, design landscape and research directions

# 6 Application & Adoption

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Turning now to the application and adoption of the standards, we consider each of these in turn:

## Application

### Document Generation, Workflow & Negotiation Platforms

These tools and platforms can dramatically increase the efficiency of negotiating and executing GMSLA documentation. Clause taxonomies and libraries are at the heart of such tools and platforms as:

- (a) the templates to be populated by a selection of clauses from the clause taxonomy and the relevant clause variant, as well as the variables within such clause variant;
- (b) management of the selection of clause variants through internal approvals (including the selection of clauses, their variants and variables);
- (c) validation of the combination of clauses selected;
- (d) management information in respect of the negotiation and documentation process; and
- (e) provision of the details of the variable values agreed in contractual terms to internal (e.g., counterparty risk management and collateral optimisation) and external (e.g., to regulators as part of regulatory reporting requirements) consumers, allowing them to manage their relevant business processes that are reliant on legal agreement data.

### Regulatory Reporting against the Legal Agreement Data Standards

The initial focus post-financial crisis centred on trade level reporting (which on the surface requires trade confirmation level data, rather than legal agreement data). The regulatory demands have rightly expanded however in this regard, recognising that such transactions are governed by the framework legal agreements such as the GMSLA. A good example of this is the QFC Recordkeeping, which was adopted in October 2016, implementing recordkeeping requirements for qualified financial contracts, such as the GMSLA, in connection with Title II of the Dodd Frank Act in its scope. This broadly requires in-scope entities to maintain specific information electronically on QFC positions, counterparties, legal agreements, and collateral, and be in a position to report this information to regulators within 24 hours of request. The purpose is to assist the FDIC to make an informed determination on whether to transfer, disaffirm, or terminate QFCs entered into with counterparties upon a distressed scenario, and conclude whether any financial systemic risks would be posed by such a decision.



## 6 Application & Adoption

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The file structure for the US QFC recordkeeping requirements is organised into an appendix of four tables and reports, one of which is referred to as the “Table A-3 (Legal Agreements)”. It requires each legal agreement to be identified by name and unique identifier and requires the maintenance of records on key legal terms of the agreement, such as relevant governing law, termination events and specified financial conditions and information about any third-party credit enhancement agreement.

This however creates an issue for both firms in scope of the regulatory recordkeeping requirement as well as regulators. There is little by way of standards to guide the reporting style, and with different ways in which to detail the variant clauses, and key variable details embedded within them. For example, in respect of termination clauses, in-scope firms are each likely to report on the same clauses in different ways. This in turn creates issues for regulators and other consumers of this data, including internal consumers of the data such as counterparty risk management trying to aggregate such data, potentially across multiple reporting entities.

An industry standard Clause Library and Taxonomy offers a way in which to address this issue, and furthermore, for firms, regulators, and others to use this data, to derive business intelligence due to the standardised formatting and presentation. This does not (nor is it intended to) prevent bespoke wording where the clause or clause variant is outside of the defined clause variants in the clause library but can easily be identified and managed as such.

### Data Analytics

Our work with market participants as part of the Documentation Working Group, as well as a D2LT industry survey conducted in 2020<sup>16</sup>, showed little appreciation or management of the variants of clauses agreed to in the legacy agreement portfolios of member firms. Views on the frequency of particular fallbacks were often subjective in nature, and with less quantitative backing available. Actual reviews of legacy master agreement portfolios often showed a misunderstanding of general positions adopted.

Through the increased use of document generation tools and negotiation platforms, it would be possible, if integrated with the proposed legal agreement Clause Library and Taxonomy, to be able to monitor clause variant usage (and of variables). This could also be done for an industry as a whole, to assist with the maintenance of the standard as market negotiation positions evolve and change (although this would of course need to be managed in a way that did not breach commercial sensitivities, confidentiality of the terms agreed between two parties, or raise privacy concerns).

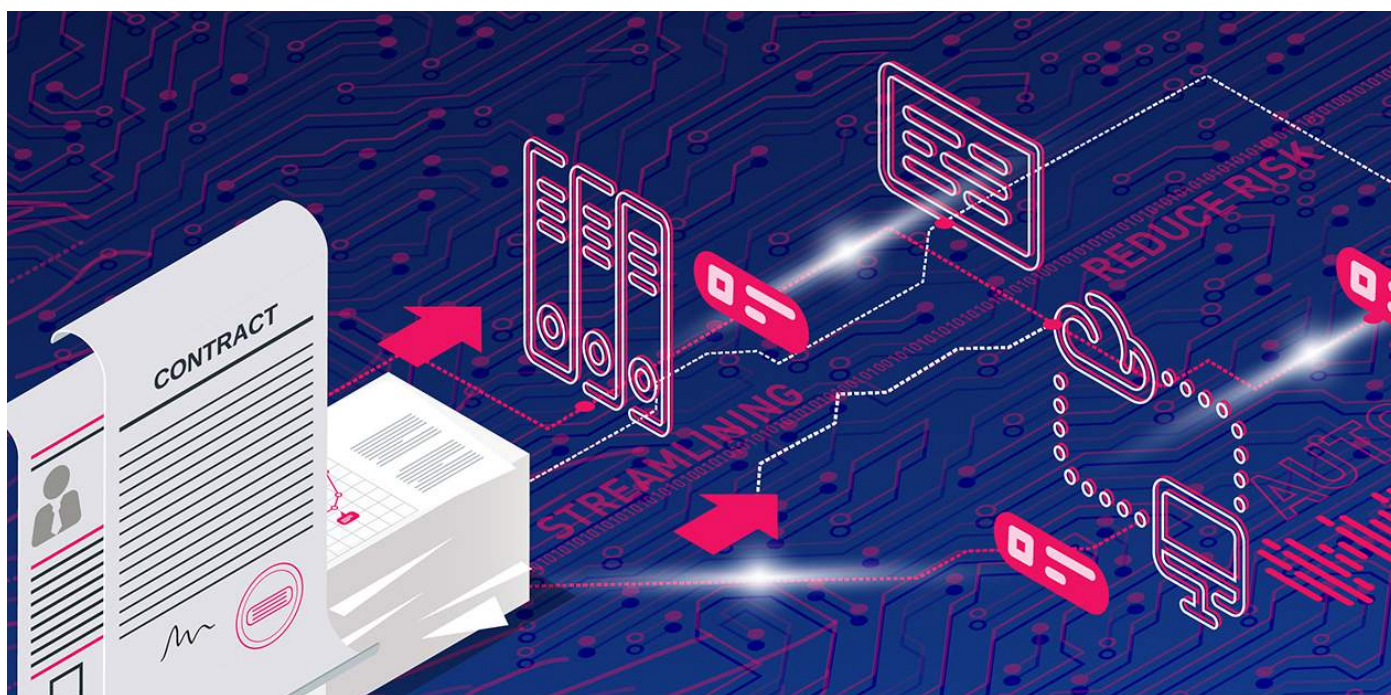
### Regulatory and Market Change Management

Changing regulations and market events often mean that market participants are required to identify certain clauses and variants of these clauses within their agreement portfolios. There is currently no defined way of referring to these. The Clause Library and Taxonomy would enable advisory groups, such as ISLA working groups, law firms and in-house legal and compliance functions, to be able to provide more tailored guidance that can be applied to the clause variants in the library. For example, in the future the presence of a certain variant of the “Insolvency Event of Default”, might be required for the close-out netting legal opinion for a particular jurisdiction to be regarded as enforceable for regulatory capital purposes under a GMSLA. The GMSLA Clause Library & Taxonomy would enable its clear identification and tailored advice in that regard.

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<sup>16</sup> D2LT Master Agreement Documentation Systems & Processes Survey, conducted in 2020 with 33 market participants.

## 6 Application & Adoption



### Legal Agreement Review Tools

With the increased efficiency and accuracy of digitisation tools, increasing numbers of market participants have run proof of concepts, or indeed invested in tools to extract legal agreement clauses and data from legacy legal agreement portfolios.

Although the accuracy and effectiveness of these tools (typically combining optical character recognition technology with a rule-based or artificially intelligent/machine-learning approach to aid identification of important clauses and wording), is increasing, these implementations have been stymied by the lack of an industry-based clause taxonomy and variants. This has put a significant burden on each firm investing in such systems, to configure them to work with individual firm representations of clauses and clause variants, of which there may be more than one across different departments (e.g., legal, collateral, risk and operations). The standard framework provided by the Clause Library and Taxonomy means that legal agreement review tools can better prosper by mapping to such standards and deriving learnings of different representations across the industry, as well as facilitating inter-operability between systems reliant on legal agreement data as an input, and those producing legal agreement data as an output. The focus of the GMSLA Clause Taxonomy is on classification of outcomes of wording, and the Clause Library then focuses on the wording itself.

This split approach is key to ensuring the ability for consumers of the legal agreement data to unlock business intelligence and value, and to preserve the lineage between business outcomes in contracts (and the wording that can be used to achieve these business outcomes).

### Smart Contracts

To complete the steps for developing smart contracts, one needs to consider which contractual terms are suitable for automation, and where to map clauses and relevant clause variants to the business processes which mean the outcomes are automated. This exercise, without a framework through which to refer to clauses, their variants and outcomes, is likely to lead to miscommunication between lawyers, technologists and others. The Clause Library and Taxonomy offer a much needed and tangible means of bridging this potential communication gap across disciplines.

## Adoption

Markets and industries, by their very nature, tend to resist new ideas, products and standards. They are inimical to change and innovation because they crave equilibrium. Equilibrium, as defined by the inspirational mind of Nobel Prize winner John Nash, is a situation where every player in a market believes that he or she is making the best possible choices, and that every other player is doing the same. Equilibrium in a market lends stability to the players' expectations, validates their choices, and reinforces their behaviours<sup>17</sup>. Added to this, notably with respect to the securities lending industry, is the sheer amount of change to the pre- and post-trade processing and market infrastructure landscape following the 2008 financial crisis. Market participants have been buffeted by an incessant need to make changes to support pre- and post-trade activities whilst complying with new, and much more demanding regulatory obligations. Despite the clear sense in adopting a legal agreement standard to support this change, there is of course a whirlwind of required activity, that might pose the question – why now?

Despite a compelling rationale and potential benefits of a legal agreement data standard founded on the proposed legal agreement clause library, from a market participant perspective, until such a standard reaches a critical point of adoption, the costs might be perceived to outweigh the benefits, certainly of being an “early-mover” in terms of adoption. Indeed, in some cases, there may in fact be an early-mover disadvantage in terms of the time, effort and resources invested into the early phase of a standard, although it can be an advantage, with an ability to shape the standard through its early development and uptake to best unlock its value from the individual firm's perspective.

However, it is key to consider economies of scale, the network effect and that together as an industry and membership, we can sooner unlock the benefits of implementing such a legal agreement standard through the following:

(a) *Education of the standard, what its benefits will be, and the effort and cost required to implement it to derive such benefits as a firm or market participant.* This paper seeks to commence this educational journey and will be continued through various ISLA forums, symposia, member and regulator discussions. The education time and effort will visibly support the transformation, an investment that will pay dividends long after the implementation of the standard.

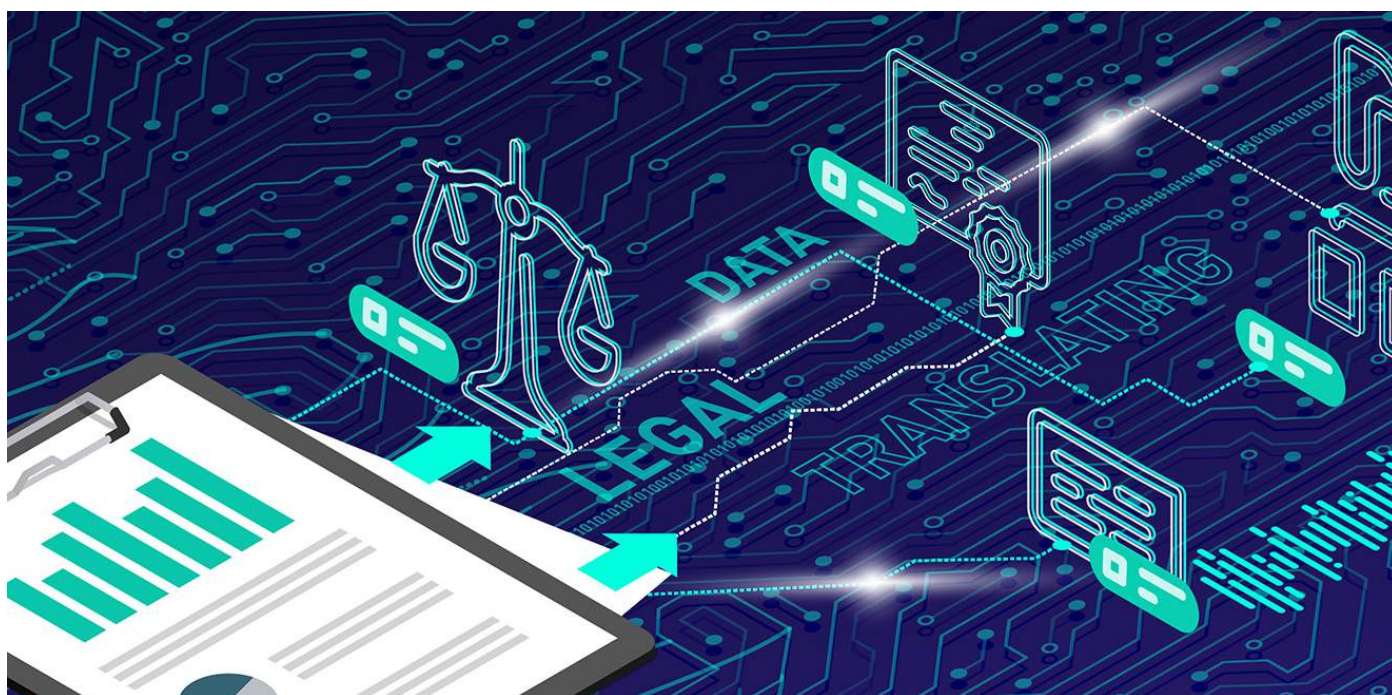
(b) *Lower the barriers to adoption as much as possible.* The adoption of any standard involves multiple participants with different interests and priorities, which may be broadly aligned, but may diverge in certain regards. Accordingly, it is important to minimise the barriers to adoption, which may range from perceived complexity, capacity and cost to needing to reconfigure existing setups. Accordingly, these are examples of a number of the factors that have been considered as part of the design principles (see Appendix) when creating the standard as part of Phase 1, and will continue to do so in future phases. By increasing member engagement and participation in the creation and setting of the standard, we can ensure a low-barrier adoption by such participating institutions guiding the manner in which the standard is set. There has been good member participation in Phase 1 across all parts of the legal and documentation membership, ranging from buy- to sell-side primary members, law firms, software vendors and consultancies. Furthermore, this has been global in nature, across Europe, the Americas and the Asia Pacific regions. We do however need to broaden the participation to other areas, outside of legal and documentation. It must be remembered that we all have a role to play, and we envisage the industry recognising this opportunity and grasping it together.

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<sup>17</sup> The New Rules for Bringing Innovations to Market – Bhaskar Chakravorti – Harvard Business Review – March 2004

## 6 Application & Adoption

- (c) *Maximise and communicate the benefits of implementing the standard.* The legal agreement standard will be utilised across a number of industry initiatives as described below. Accordingly, there will be several immediate incentives arising from the adoption of it, ranging from seamless use of negotiation platforms, data outputs and analytics from such tools, to allowing other platforms in this area to provide further benefits through interoperability. Working groups, such as those focused on SFTR and CSDR, will also start to utilise items such as the clause taxonomy, allowing adopters to better apply research, analysis and advice obtained by ISLA on these important topics, and manage through such market and regulatory change. Success of such a standard is a virtuous circle, and we envisage a plethora of utilities and platforms developing across the whole securities lending management landscape, that would further maximise benefits of adoption, across the short, medium, and long-term horizons.
- (d) *Managing changes to the standard.* Standards need to strike the right balance between maintaining a position to allow adoption, as well as allowing room for it to evolve as may be necessitated by market changes, new and changing regulation, as well as other developments over time. Accordingly, a change control process will be defined to achieve the right balance in this regard.
- (e) *Regulatory encouragement to adoption.* As mentioned above, regulatory reporting of legal agreement data has been incredibly difficult without the presence of legal agreement standards. Many submitted reports, although individually correct, have failed to easily allow aggregation by regulators across market participants to identify issues and trends, for example, in respect of ensuring financial stability. We envisage that the creation of such a standard, for example on reporting on termination events contained within Qualified Financial Contracts, to be beneficial for all, across reporting firms, market service providers and regulators. Accordingly, the clause library standard for clauses, could, as the standard is established, be the de facto standard which firms map their legal agreement data reporting to lessen the burden for all.



# 7 Next Steps on the Clause Library & Taxonomy Project and Related Initiatives

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**Based on the success of the proof of concept and the benefits that can be realised by finalising such a standard, the following short, medium, and longer-term initiatives have been identified as the strategic roadmap to the digitalisation of the GMSLA:**

## **Short Term (2021)**

### **Extension of the Clause Library and Taxonomy**

This will seek to continue the development of the Clause Library and Taxonomy in the same manner as the proof of concept, to complete for the GMSLA clauses in 2021.

### **Legal Agreement Digitisation Change Control Forum & Design Authority**

Upon the establishment of the clause library for the proof of concept clauses, these will be put under change control and a formal mechanism will be set up so as to allow any changes that are needed to the standard, due to regulatory, market, or other developments that occur over time, to be made in a controlled manner, cognisant of the impact this might have on those adopting the standard. A design authority will be established to ensure decisions made as part of the legal agreement standards being created, are in line with broader ISLA and member strategy.

## **Possible Future Initiatives**

### **Formal Integration of the Clause Taxonomy and Clause Library into other ISLA Initiatives**

The Clause Taxonomies and Libraries are easily converted into a format to support document generation and negotiation platforms, making the clause library available for specific agreement types, such as the GMSLA on an automated basis where required.

# 7 Next Steps on the Clause Library & Taxonomy Project and Related Initiatives

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## **Legal Agreement Regulatory Reporting Alignment**

The GMSLA Clause Library & Taxonomy provide the basis for a legal agreement data model against which such reporting can be made, for example trade reporting and the Qualified Financial Contract (QFC) Reporting. This would require discussions with regulatory bodies and other trade associations, whose legal agreements are subject to similar regulatory requirements, and to which the legal agreement standards which are being defined could helpfully be extended.

## **Industry Legal Agreement Data Model**

The development of a legal agreement data model for representing the contractual obligations of legal agreements used for securities lending transactions, extensible to other agreement types.

## **Integration with other industry Master Agreement Clause Taxonomies and Libraries**

The GMSLA Clause Library & Taxonomy work is similar to the work done by ISDA in respect of the ISDA Master Agreement and related collateral agreements<sup>18</sup>. It is also expected that others will follow with similar initiatives. Both the standard form documentation published by trade associations, and the clause taxonomies built in relation to them, do not live in

isolation. These standard form agreements result in similar business outcomes, and therefore to maximise business value from a Clause Library and Taxonomy, such common outcomes ought to be aligned across clause taxonomies and libraries.

## **Digital GMSLA**

The creation of the first purely digital version of the GMSLA as a full representation of the Clause Library and Taxonomy which members can negotiate through supported negotiation platforms.

Unlocking the value of the Clause Library and Taxonomy requires ISLA member support and engagement, especially with the prioritisation of the next steps and future initiatives that add most value to the industry. We very much welcome your involvement and feedback in the various working groups and discussions on these topics to help guide our success for the membership and for the securities lending and financial services industry.

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<sup>18</sup> <https://www.isda.org/2020/06/23/isda-launches-clause-library/>



**ISLA plays a pivotal role in the industry promoting best practices and processes. The GMSLA has been shown to be incredibly durable and remains key to the effective functioning of the market. Many agreements are still customised between the parties, often a reflection of an individual firm's form of template or house style. This leads to significant operational and credit risk representing a barrier to the digital transformation journey which is increasingly needed by the industry to respond to ongoing market and regulatory changes.**

In an increasingly data-driven world, firms are moving to operationalise their business through automated data-driven processes allowing greater efficiencies, scalability and resilience through the medium of data. Key to this is the representation of written contractual terms in a manner which follows a consistent, predictable and structured data format. If the structured data form is available, contract negotiation platforms can be used to agree the commercial variables. Business processes can be aligned, and data models can be developed and adopted which enable legal technology solutions and downstream systems. Further development of AI solutions and smart contracts become possible.

Legal agreement clause taxonomies and libraries create the framework and the structured data within which to work. A proof of concept successfully demonstrated the utility of enumerating business outcomes for each clause with their associated clause variants and allowable values. Plans are now in place to complete the GMSLA Clause Library & Taxonomy for the remaining clauses of the agreement in 2021. Education of market participants in the use of the standard, lowering the barriers to adoption, maximising and communicating the benefits, managing changes to the standard and working with regulators are the keys to driving adoption.

The size of the prize for market participants should not be underestimated. Next steps after completing the clause library for the remaining GMSLA clauses, will be to establish a legal agreement digitisation change control forum & design authority. The industry will then be ready to progress the formal integration of the GMSLA Clause Library & Taxonomy into other ISLA initiatives, integration with negotiation platforms, legal agreement regulatory reporting alignment and an industry approved "standard" legal data model leading ultimately to a natively digital GMSLA.

This journey, whilst worth taking depends on continued further collaboration between ISLA and its members. We invite you to share your ideas or to get involved in this transformational agenda by contacting [regtech@islaemea.org](mailto:regtech@islaemea.org).



## ISLA GMSLA Clause Taxonomy & Library Design Principles

<b>1. Summary Significance</b>	<ul style="list-style-type: none"> <li>Each variant (of which there may be more than one) has specific and unique business, commercial, operational and/or regulatory impact.</li> </ul>
<b>2. Designed To Facilitate Easy Classification</b>	<ul style="list-style-type: none"> <li>The clause variants allow a particular sentence or a clause to be specifically and uniquely categorised to a particular clause variant without ambiguity. Clause variants are markedly different to each other.</li> </ul>
<b>3. Justified By History Or Future Usage</b>	<ul style="list-style-type: none"> <li>Clause variants are supported by actual industry usage or well-grounded argument for future use by the industry.</li> </ul>
<b>4. Manageable to Monitor</b>	<ul style="list-style-type: none"> <li>The number of clause variants for a clause is manageable such that the universe of clause variants for that clause can be readily examined and tested with Design Principle 2. An a general rule clause will require no more than ten variants, although there may be specific justifications and need to depart from this (e.g. where the number of variants required needs to be aligned to the number of related jurisdictions).</li> </ul>
<b>5. Broad Market Applicability</b>	<ul style="list-style-type: none"> <li>Clause variants are applicable to the market broadly and not just to one specific market. The default clause library variants should not give rise to confidentiality issues in terms of being clear that they relate to a particular recipient from a preferred clause wording.</li> </ul>
<b>6. Flexibility</b>	<ul style="list-style-type: none"> <li>The clause variants can be easily extended in line with market and regulatory developments, as well as across agreement types. However once made active, clause variants will not be modified. If a clause variant proves no longer relevant to newly negotiated agreements, that non-relevance remains available for reference within the clause-variant library (as it will remain applicable to legacy agreements). If the clause of use has been a material change in the wording of the related clause (for example to reflect a change in regulatory) then a new variant will be introduced.</li> </ul>

<b>7. Substantive Rather Than Form</b>	<ul style="list-style-type: none"> <li>The clause variants are sensitive to the substantive impact of the clause and not its specific drafting, formatting or location in the document (or documentation architecture).</li> </ul>
<b>8. Contractual Clauses Only</b>	<ul style="list-style-type: none"> <li>The clause variants relate to contractual terms (as may be detailed in a written contract) and not, for example, overriding regulatory terms.</li> </ul>
<b>9. Facilitates The Interrelation of Clauses</b>	<ul style="list-style-type: none"> <li>The clause variants are built in a way that allows the inter-relationship of clause variants of one clause to be linked to the clause variants in respect of clauses of other related clauses.</li> </ul>
<b>10. Exception Management</b>	<ul style="list-style-type: none"> <li>The clause variants allow the handling of clauses that do not naturally fit within a clause variant to be managed as an exception clause variant type.</li> </ul>
<b>11. Modular</b>	<ul style="list-style-type: none"> <li>The number of clause variant items (be it business, regulatory or operational) can be modulated and provide basic building blocks across agreement types. The clause variants are defined in a modularised manner rather than a simple list to support this.</li> </ul>
<b>12. Proportional To The Expected Use Case</b>	<ul style="list-style-type: none"> <li>The number of clause variants will be defined relative and proportionally to the use case for the clause library for a particular clause, e.g. document generation and negotiation platforms vs. standard data required by a business process. The clause variants defined will, as a future step, allow controls to be developed and automatically and standard clause variants and exceptions, always included to or regulated back to a standard form if possible – or else be subject to early focus in terms of ESR (email, input and data) indicators.</li> </ul>
<b>13. Business Outcomes Align Across Agreement Types</b>	<ul style="list-style-type: none"> <li>Business outcomes align across different master agreement types / align across ISLA and ISLA but nevertheless remain.</li> </ul>

## ISLA GMSLA Clause Wording Drafting Principles

<b>1. Clear and Concise</b>	<ul style="list-style-type: none"> <li>The drafting language used is clear and concise.</li> </ul>
<b>2. Avoidance of Jargon and Legalese</b>	<ul style="list-style-type: none"> <li>If two words convey the same meaning equally well, use the most commonly understood one rather than the less commonly understood one.</li> </ul>
<b>3. Use of the 3rd person</b>	<ul style="list-style-type: none"> <li>Use of the 3rd person as default (e.g. use of "will" instead of "shall").</li> </ul>
<b>4. Consistency</b>	<ul style="list-style-type: none"> <li>Consistency of grammar, tense, pronouns, words used and other features in the Schedule text – unless required to signal a change in outcome or meaning.</li> </ul>
<b>5. Drafting in straight lines</b>	<ul style="list-style-type: none"> <li>The drafting language used in the Schedule for a clause "travels in straight lines", and avoids reversing outcomes through the use of phrases such as "provided however" where possible. NB. This principle applies to within individual clauses.</li> </ul>
<b>6. Amendment of entire clauses</b>	<ul style="list-style-type: none"> <li>Amendments of preprint clauses and sections are made by amending and restating the entire clause / section, rather than individual words, phrases and/or sentences. Amendments make changes to the actual wording of the preprint rather than providing the intended outcome.</li> </ul>
<b>7. Same schedule wording across preprint versions</b>	<ul style="list-style-type: none"> <li>The drafting language makes use of the same Schedule wording across preprint versions – unless there is good reason to depart from this.</li> </ul>
<b>8. Reference to Preprint sections</b>	<ul style="list-style-type: none"> <li>The drafting language makes specific reference to the preprint sections being amended and/or restated, unless required otherwise.</li> </ul>
<b>9. Grouped Clause Language</b>	<ul style="list-style-type: none"> <li>Drafting language related to the same clause is grouped physically together. Line breaks are used for readability but excessive line breaks are avoided.</li> </ul>
<b>10. Defined Terms</b>	<ul style="list-style-type: none"> <li>Creation of new defined terms outside of those defined in the preprint are avoided without good reason. Where new defined terms are created, they facilitate clear and consistent usage. The first letter of defined terms is capitalised to indicate a defined term.</li> </ul>
<b>11. Headings</b>	<ul style="list-style-type: none"> <li>Clause headings are used to signpost individual clauses (by reference to the Clause Taxonomy).</li> </ul>
<b>12. Modular</b>	<ul style="list-style-type: none"> <li>The drafting language is modular in nature encouraging consistency under Drafting Design Principle 4.</li> </ul>
<b>13. Avoidance of Cross-Dependency</b>	<ul style="list-style-type: none"> <li>Drafting language does not needlessly create cross-dependency with other clauses (unless inherent in the clause definition per the Clause Taxonomy).</li> </ul>
<b>14. Avoidance of Elegant Variation</b>	<ul style="list-style-type: none"> <li>Avoidance of elegant variation (e.g. the use of synonyms and expressions to avoid inlegant repetition of the same word or phrase).</li> </ul>

<b>15. Numbering and Indentation</b>	<ul style="list-style-type: none"> <li>The use of tabulation to assist with lengthy sentences:                     <ul style="list-style-type: none"> <li>these only include items of the same class</li> <li>each item is consistent in substance and grammar with words appearing before the colon and any words following the final item</li> <li>use of successive indentation where appropriate</li> <li>use of a semicolon after each item except the last, followed by:                             <ul style="list-style-type: none"> <li>(i) and (if the list is disjunctive)</li> <li>(ii) and (if the list is conjunctive)</li> </ul> </li> </ul> </li> </ul>
<b>16. Tables</b>	<ul style="list-style-type: none"> <li>Any tables used:                     <ul style="list-style-type: none"> <li>have clear column and row headings</li> <li>have rows that represent an item of the same class</li> <li>avoid sub-headers</li> </ul> </li> </ul>
<b>17. No Checkboxes</b>	<ul style="list-style-type: none"> <li>The avoidance of checkboxes.</li> </ul>
<b>18. Schedules should follow the Pre-Print / Master</b>	<ul style="list-style-type: none"> <li>If there is no conflict with any of the other design principles, the language should be consistent between the schedule and the master e.g. clause 1.2 shall apply.</li> </ul>

# 10 Glossary

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“AI”	means Artificial Intelligence
“API”	means Application Programming Interface
“BCBS239”	means the Basel Committee on Banking Supervision’s standard number 239
“BOE”	means the Bank of England
“CDM”	means the Common Domain Model
“CSDR”	means the Central Securities Depositories Regulation
“D2LT”	means D2 Legal Technology
“FDIC”	means the Federal Deposit Insurance Corporation
“FSB”	means the Financial Stability Board
“GMSLA”	means the Global Master Securities Lending Agreement
“ICMA”	means the International Capital Markets Association
“ISLA”	means The International Securities Lending Association
“LBMA”	means the London Bullion Market Association
“QFC”	means the Qualified Financial Contracts
“SFTR”	means the Securities Financing Transactions Regulation - Regulation (EU) 2015/2365 of 25 November 2015
“UC”	means the University of California

## About ISLA

**International Securities Lending Association (ISLA) is a leading industry association, representing the common interests of securities lending and financing market participants across Europe, Middle East and Africa. It's geographically diverse membership of over 155 firms, includes institutional investors, asset managers, custodial banks, prime brokers and service providers.**

### What do we do?

Working closely with the global industry as well as regulators and policy makers, ISLA advocates the importance of securities lending to the broader financial services industry. ISLA supports the development of a safe and efficient framework for the industry, by playing a pivotal role in promoting market best practice, amongst other things. ISLA sponsors the Global Market Securities Lending Agreement (GMSLA) and the annual enforceability review in over 65 jurisdictions globally.

### How do we do it?

Through member working groups, industry guidance, consultations and first-class events and education, ISLA helps to steer the direction of the industry and is one of its most influential voices on the European and global stage.

## About D2 Legal Technology

D2 Legal Technology (D2LT) is a multi award-winning legal data consulting firm with operations in London, New York, Frankfurt, Charlotte, Hong Kong and Sydney, acting as a trusted advisor to our clients on process, data and the use of technology to unlock business value through legal change.

### What do we do?

In a complex world, with heightened regulatory expectations, it is often difficult for institutions to effectively assess the impact of, and risks associated with, their legal data. Contract and legal opinion data is often limited in availability, littered with data quality issues and difficult to consume by many of the affected parties e.g. Trading, Treasury, Risk, XVA and Collateral. Legal teams increasingly turn to technology to address issues related to legal data, operating model and processes and yet it often turns out not to be the panacea that was envisaged. Our work with clients focuses on understanding, refining and optimising the processes and data within in-house legal departments and consumers of legal data to meet business needs, thereby ensuring that solutions are appropriate and unlock genuine business value.

### How do we do it?

Our approach is to advise clients how to optimise business processes and structure data effectively before employing enabling technology, typically a precondition to maximising the value of such solutions. We have a blend of industry knowledge, legal, technology, strategy and transformation skills which equips us to quickly assess the issues an institution is facing and to deliver pragmatic solutions that integrate legal data with downstream legal data consumers within Risk, Trading and Operations.



## Disclaimer

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