

**CITY OF LONDON LAW SOCIETY
FINANCIAL LAW COMMITTEE**

**Minutes for the meeting held at 12.45 pm on 16 January 2024
at the offices of Paul Hastings (Europe) LLP, 100 Bishopsgate, London EC2N 4AG and also
by Teams**

Present: Sarah Smith (Baker & McKenzie LLP) (Chairman) – in person
Fiona Fitzgerald (Allen & Overy LLP), as alternate for Simon Roberts - in person
Jake Jackaman (Herbert Smith Freehills LLP) - in person
David Ereira (Paul Hastings (Europe) LLP) – in person
Matt Dunn (Clifford Chance LLP) – in person
Nick Swiss (Eversheds Sutherland (International) LLP) – in person
Jeremy Stokeld (Linklaters LLP) – in person
Nigel Ward (Ashurst LLP) – by Teams
Penny Angell (Hogan Lovells International LLP) – by Teams
Mark Evans (Travers Smith LLP) – by Teams
Emma Giddings (Norton Rose Fulbright LLP) – by Teams
Edward Fife (Slaughter and May) – by Teams

Attending: Natalie Butchart (Baker McKenzie LLP) (Secretary) – in person
Dorothy Livingston (former Chairman and member) – in person

1. APOLOGIES FOR ABSENCE, APPROVAL OF MINUTES

1.1 Apologies for absence

The Chairman opened the meeting and reported that apologies had been received from James Bresslaw (Simmons & Simmons LLP) and Presley Warner of Sullivan & Cromwell LLP.

1.2 Minutes of the last meeting

The minutes of the last meeting, held on 11 October 2023, were approved.

2. DIGITAL ASSETS (M. EVANS, S. SMITH)

2.1 Law Commission Consultation Paper

It was reported that the Chairman, Mark Evans and Dorothy Livingston, with help from Richard Calnan of Norton Rose Fulbright, had held discussions with an academic who holds similar concerns to those of some members of the Committee with respect to the Law Commission's Final Report on Digital Assets. The academic has since written two articles articulating some of these concerns; one of these articles is published in the January 2024 edition of JIBFL. Dorothy Livingston suggested that the Committee may also consider sharing the articles with members of the judiciary and seeking a session with the Judicial Studies Board to raise awareness of the continuing concerns of some members of the Committee.

It was noted that Professor Sarah Green of the Law Commission had indicated, during the public hearing held by the UKJT on 28 November 2023 to discuss its consultation paper on

Digital Assets and English Insolvency Law, that the Law Commission hoped to publish its consultation paper on the rules relating to conflict of laws as they apply to emerging technology, including smart legal contracts and digital assets, in February 2024. The Committee agreed that, although connected, this was a distinct issue and that the Committee should move forwards with sharing its concerns on the Law Commission's Final Report on Digital Assets with other interested bodies.

Dorothy Livingston noted that she would be speaking to the Financial Markets Law Committee, during the week commencing 22 January 2024, about the Committee's concerns and would report back to the Committee following that meeting.

It was reported that the Committee had also been approached by the head of Infrastructure & Exchanges – MI Capital Markets, Supervision, Policy & Competition – Markets at the FCA and a Teams call was held between FCA representatives, the Chairman, Mark Evans and Dorothy Livingston during which a number of points were put forwards for the FCA to consider in the context of its various regulatory roles. The FCA has taken these points away for consideration.

It was agreed that the article published in JIBFL should be shared with the FCA.

The Chairman asked for volunteers to be part of the working group on this item.

Postscripts: On 17 January 2024, Mark Evans shared the longer version of the academic article titled ' Digital assets, blockchain and relativity of title', which was published in the Journal of Business Law.

On 22 February 2024, the Law Commission published a Call for Evidence on Digital Assets and Electronic Trade Documents in private international law, and a short Consultation Paper on draft clauses of a Bill on Personal Property Rights.

2.2 UK Judicial Taskforce Consultation

It was reported that the Committee had prepared a joint submission with the CLLS Insolvency Law Committee to the UK Judicial Taskforce consultation paper on Digital Assets and English Insolvency Law. The joint submission was submitted on 4 December 2023. Members of our Committee contributing to the joint submission were David Ereira, Mark Evans and the Chairman.



CLLS response to
UKJT consultation o

2.3 Digitalisation Taskforce Interim Report

There was nothing further to report on this item since the joint submission of the Company Law Committee of the CLLS, the Financial Law Committee of the CLLS and the Company Law Committee of The Law Society to the Digitalisation Taskforce Interim Report had been provided on 25 September 2023.

A watching brief will be kept on this item.

2.4 HM Treasury Papers on the regulatory framework for digital assets

It was noted that on 30 October 2023, HM Treasury published three papers related to regulated cryptoassets and stablecoins:

- [response to the consultation and call for evidence on the future financial services regulatory regime for cryptoassets](#)
- [update on Plans for the Regulation of fiat-backed Stablecoins](#)
- [response to consultation on managing the failure of systemic digital settlement asset \(including stablecoin\) firms](#)

3. **POTENTIAL REFORM OF THE FINANCIAL COLLATERAL REGULATIONS**

It was reported that the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "FCARS") are listed in Schedule 1 to the Financial Services and Markets Act 2023 and, therefore, will be revoked and replaced in due course. It was noted that no date has been specified for the revocation, and no draft legislation for a replacement of the FCARS has been published.

On 25 October 2023 (albeit its letter is undated), the FMLC published a letter to Daniel Jones at H.M. Treasury in which it proposed a number of changes to the FCARS, noting the opportunity presented by the revocation and replacement of the FCARS in their current form.

The Chairman has written to Daniel Jones at H.M. Treasury, referring to the FMLC's letter and endorsing the need to amend the FCARS, but indicating that the Committee thought that there is an alternative and likely simpler approach to address the legal uncertainties currently arising from the FCARS. This alternative approach was set out in a draft paper prepared by the Committee a couple of years ago, which remains relevant today; a copy of the paper was provided to Daniel Jones. The Chairman received a response from Daniel Jones, introducing his colleague in the legal group at the Funds, Markets and Securities who is looking into the issues surrounding the FCARS,

4. **NATIONAL SECURITY AND INVESTMENT ACT 2021 (P. ANGELL)**

It was reported that the joint working group on this Act, comprising members of this Committee and members of the CLLS Insolvency Law Committee, had been revived to prepare a response to the Government's [Call for Evidence](#) in respect of the Act. It was noted that Penny Angell has taken up the position as co-chair of this working group.

The Committee's final response to the Call for Evidence, including input from the Insolvency Law Committee, was submitted on 15 January 2024.



UKP1-#2023352831-
v3 NSIA Call for Evid

It was noted that the CLLS Insolvency Law Committee also submitted its own separate response, as did the CLLS Company Law Committee, working jointly with The Law Society's Company Law Committee.

The Chairman requested that all Committee members keep a watching brief on this item and report any in-practice examples that might helpfully illustrate any of the concerns raised by the Committee in its response paper.

5. **FRISCHMANN V. VAXEAL HOLDINGS S.A. & ORS [2023] EWHC 2698 (CH)**

It was reported that there had been much discussion amongst both City corporate and finance lawyers on the decision made in this case on the particular issue of what was meant by the phrase "under the hand of the assignor" in s. 136(1) of the Law of Property Act 1925. The case held that, in the case of an individual, the requirement in s. 136 for a legal assignment to be "under the hand of the assignor" meant that the assignor himself had to sign the document of assignment, not his attorney or agent, noting that the provisions of the Powers of Attorney Act 1971 did not operate to vary the requirements of s. 136, and other provisions of the Law of Property Act 1925 (including, for example, section 53) expressly refer to signature by an agent. The decision in this case has raised questions about its potential application, and best practice, in the case of a corporate entity (whether incorporated in a constituent jurisdiction of the United Kingdom or an "oversea company" for the purposes of the Companies Act 2006) executing a legal assignment.

The Chairman noted that she had been approached by the Financial Markets Law Committee (the "FMLC"), requesting a call to discuss this case and confirmed that a call had been arranged.

Postscript: It was agreed that Matt Dunn, Clifford Chance LLP, would lead a working group to discuss next steps, for example, whether the Committee should publish a paper and/or instruct Counsel to obtain Counsel's opinion. The FMLC has, since the Committee's meeting on 16 January 2024, confirmed to the Chairman that, at this point in time, it does not propose to publish its own paper, but would like to be kept abreast of the Committee's work on this case.

6. **PROSPECTUS REGIME (E. FIFE)**

It was noted that Matt Dunn had spoken with those working with ICMA on its response to the consultation on Engagement Paper 4 and their view was that the revised final draft prospectus regime legislation largely addresses the concerns raised by ICMA, LMA, CLLS and others. ICMA provided technical comments and other organisations, for example City UK, chose to rely on this response rather than providing their own.

There was nothing further to report on this item.

7. **LIBOR CESSATION AND RFR TRANSITION (M. DUNN)**

It was noted that:

- the ARRC had held its final meeting on 8 November 2023 and issued its closing report before being formally dissolved;
- the European Securities and Markets Authority, in its capacity as Secretariat of the Working Group on Euro Risk-Free Rates, had issued the final statement of the group, concluding its work on the EU interest rate reform. In summary it confirmed ESTR as the risk-free rate for the euro and the definition of EURIBOR fallback provisions for each asset class;
- it was confirmed by the FCA that 3-month synthetic GBP LIBOR will cease to be published at the end of March 2024; and
- the LMA had published its exposure draft facilities agreement incorporating term ESTR fallbacks from EURIBOR in October 2023. The draft is designed to provide a suggested documentary framework for the second of the Working Group on Euro Risk-Free Rates recommendations published in May 2021, i.e. a two-level waterfall solution consisting of term ESTR on the first level and compounded ESTR on the second level.

8. **FINANCIAL SERVICES AND MARKETS ACT – IMPLEMENTATION OF THE CENTRAL COUNTERPARTIES (CCP) RESOLUTION REGIME, CCP RESOLUTION LIAISON PANEL (M. EVANS; DELEGATE: PETER HUGHES)**

It was reported that the following four pieces of legislation had been published and came into force on 31 December 2023:

- [Financial Services and Markets Act 2023 \(Resolution of Central Counterparties: Deferment of Provisions in Resolution Instruments\) Regulations 2023](#)
- [Financial Services and Markets Act 2023 \(Resolution of Central Counterparties: Calculation of Maximum Amounts for Cash Calls and Use of Specified Funds\) Regulations 2023](#)
- [Resolution of Central Counterparties \(Modified Application of Corporate Law and Consequential Amendments\) Regulations 2023](#)
- [Financial Services and Markets Act 2023 \(Resolution of Central Counterparties: Partial Property Transfers and Safeguarding of Protected Arrangements\) Regulations 2023](#)

Postscript: Peter Hughes separately reported that, in parallel, H.M. Treasury had consulted on the draft CCP Special Resolution Regime Code of Practice. Members of the CCP Resolution Liaison Panel provided their comments on this consultation to H.M. Treasury in

November 2023, following which H.M. Treasury updated the draft Code and published it on 10 January 2024.

9. **ESG (E. GIDDINGS)**

It was reported that the CLLS ESG Committee has established sub-working groups covering the following:

- Law Society guidance on climate related risk
- HMT consultation on a regulatory regime for ESG ratings providers
- FCA consultation on the anti-greenwashing rule
- FCA consultation on aligning listed companies TCFD disclosures with ISSB standards
- FCA consultation on disclosure of listed companies transition plans
- Development of a UK taxonomy (consultation not yet launched – it had been expected in Autumn 2023 but has been delayed)

It was reported that Emma Giddings has joined the sub-working groups for the consultations on the regulatory regime for ESG ratings providers and for the development of a UK taxonomy.

10. **ELECTRONIC TRADE DOCUMENTS ACT**

The Committee was reminded that there remained outstanding conflict of law concerns in relation to this Act.

The previous Chairman, Dorothy Livingston, gave evidence to the Special Committee of the House of Lord proposing changes to address an important lacuna in the Bill that leaves legal uncertainty as to how the effect of English law rules related to the location of possessory items will be addressed in relation to electronic trade documents and how this might affect the validity or applicable law of events such as the creation of security over, the presentment of and the transfer of, digital trade documents.

It was noted that the Special Committee decided to leave this to be dealt with in the next phase of the Law Commission's work which will look at Digital Assets and Private International Law and which will report in 2024.

A watching brief will be kept on this item and Committee members were asked to report any in-practice issues that they might encounter as a consequence of the Act's application.

11. **SECURITY: MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023 (M EVANS)**

It was noted that there was nothing further to report on this matter since the last meeting.

Keep watching brief.

12. **RING-FENCING AND PROPRIETARY TRADING INDEPENDENT TRADING REVIEW FINAL REPORT (D EREIRA)**

It was reported that the Committee had agreed that it would not make submissions in response to either of:

- H.M. Treasury's consultation paper on near-term reforms relating to the bank ring-fencing regime; or
- the PRA's consultation paper setting out proposals relating to the revisions to the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 and the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014. The proposed draft Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and

Prohibitions) (Amendment) Order would enable a ring fenced bank to establish branches and subsidiaries outside the UK or the EEA.

It was agreed that this item should remain on the agenda as any further developments were likely to be of interest to and impact the Committee's area of legal practice.

13. **BREXIT**

Private International Law

It was reported that the UK government has concluded (in its [Response to Consultation on joining the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters \(Hague 2019\)](#)), published on 23 November 2023, that it is the right time for the UK to join the Hague Judgments Convention and on 12 January 2024 signed the Hague Convention of 2 July 2019 on the recognition and enforcement of foreign judgments in civil and commercial matters (Hague Judgments Convention).

The UK still needs to deposit its instrument of ratification and it will do this once the necessary implementing legislation and rules have been put in place. It is anticipated that this will occur by the end of June 2024 and the Convention will then enter into force in the UK 12 months after ratification.

It was noted that there is no change in the progress on the UK's application to re-join the 2007 Lugano Convention.

It was also noted that the UK signed the Singapore Convention on mediation in May 2023, but is yet to ratify it. The Government has indicated that it intends to do so in early 2024 and it would take effect 6 months after the ratification. This will give certain mediated settlements similar status to a final judgment.

14. **ANY OTHER BUSINESS AND CLOSE**

- The Chairman announced that David Ereira would be retiring as a member of the Committee. The Chairman thanked David for his service and contributions to the Committee and wished him well. It was noted that David will remain a member of the Insolvency Law Committee.

- **Kuvera Resources Pte Ltd v JP Morgan Chase Bank, NA [2023] SGCA 28**

This recent decision of the Singapore Court of Appeal was noted to the Committee as one of interest to their area of law. The decision reversed the original decision which had been in favour of JP Morgan. The appeal court decided that a sanctions clause in all JP Morgan's Advices and Confirmations did not justify the bank's failure to pay under a letter of credit. The court found that the bank's risk-based decision, preferring to be sued by the beneficiary than be found by OFAC to have breached sanctions, was not contractually justified.

- **Securitisation**

The publication of the UK draft Securitisation Regulations 2023 and the PRA discussion paper on securitisation capital requirements were noted to the Committee as being of interest. It was further noted that AFME were expected to submit a response to this discussion paper.

15. **NEXT MEETING**

The Committee was reminded that the next meeting will be held at 12:45 pm on 17 April 2024 at the offices of Baker & McKenzie LLP.

- 15.1 There being no further business, the meeting closed.