CITY OF LONDON LAW SOCIETY

FINANCIAL LAW COMMITTEE

Minutes for the meeting held at 12.45 pm on 16 July 2025

at the offices of Clifford Chance LLP and also by Teams.

Present:

Sarah Smith (Baker & McKenzie LLP) (Chairman) – in person
Edward Fife (Slaughter and May) – in person
Alexander Shopov (Linklaters LLP) – in person
Matt Dunn (Clifford Chance LLP) – in person
Fiona Fitzgerald (Allen Overy Shearman Sterling LLP) – in person
Nick May (Herbert Smith Freehills Kramer LLP) – by Teams
Nigel Ward (Ashurst LLP) – by Teams
Natalie Lewis (Travis Smith LLP) – by Teams
Adam Pierce (Dentons UK and Middle East LLP) – by Teams
Presley Warner (Gibson, Dunn & Crutcher LLP) – by Teams
Emma Giddings ((Norton Rose Fulbright LLP) – by Teams
Andrew Taylor (Hogan Lovells International LLP), as alternate for Penny Angell – by Teams

Attending:

Kevin Hart (CLLS) (Legal Policy Analyst) – by Teams
Natalie Butchart (Slaughter and May) (Secretary) – in person
Avril Forbes (Clifford Chance LLP) – in person

1. APOLOGIES FOR ABSENCE

The Chairman opened the meeting and reported that apologies had been received from Penny Angell (Hogan Lovells International LLP, represented by an alternate), James Bresslaw (Simmons & Simmons LLP), Flora McLean (Freshfields LLP) and Nick Swiss (Eversheds Sutherland (International) LLP).

2. APPROVAL OF MINUTES

The minutes of the last meeting, held on 23 April 2025, were approved.

3. DIGITAL ASSETS (S. SMITH)

The Chairman reported that on 5 June 2025 the Law Commission had published its Digital assets and (electronic) trade documents in private international law, including Section 72 of the Bills of Exchange Act 1882 Consultation Paper, following which the Chairman sent an email to the Committee indicating that this paper would be reviewed by the digital assets working group that was established following the April meeting of the Committee and is led by Natalie Lewis (Travis Smith LLP).

Natalie Lewis reported that the first meeting of the working group is scheduled for 29 July 2025 and reminded the Committee that the remit of the working group is on those aspects of digital assets that are relevant to the Committee's focus on financial law (noting that digital assets are relevant to many other areas of law). She further noted that at the same time as publishing the Consultation Paper the Law Commission also published an FAQ paper on Property and permissioned DLT systems in private international law; and reminded the Committee that this was a third FAQ paper in a series that included:

- Digital assets FAQs; and
- Electronic trade documents FAQs.

The Chairman further reported to the Committee that, on 15 July 2025, the Digitalisation Taskforce had published a Final Report setting out its recommendations for modernising the UK shareholder framework; and the UK Government published a response to the report indicating that it accepted the recommendations made in the report and setting out how it intends to take them forward.

4. **MACDONALD HOTELS LTD V BANK OF SCOTLAND PLC**

Macdonald Hotels Ltd and another v Bank of Scotland plc [2025] EWHC 32 (Comm)

The Chairman reminded the Committee that at the last meeting it was discussed whether the issues raised by certain comments of the judge in this case warranted the issuance of a paper by the Committee. Following that meeting of the Committee, Avril Forbes (Clifford Chance LLP) attended a meeting of the FMLC and raised the question of whether that body would be interested in co-authoring such a paper should the Committee agree that one was necessary. She reported back to the Chairman that the FMLC did not intend to take up this case and deferred to this Committee as to whether a note would be helpful to practitioners. The Chairman followed up with the Committee's members, who confirmed their support for this Committee to produce a note. A working group was established to this end and Avril Forbes kindly prepared a first draft of the paper, which was circulated to the working group for review on Friday 11 July 2025.

The Chairman requested that members of the working group submit their comments on the draft paper to Avril by no later than Friday 5 September 2025.

5. **CLLS GUIDE ON ENGLISH LAW OPINION LETTERS**

The Chairman reminded the Committee that a working group of Committee members had been formed to consider possible updates to the Guide, which was last updated on 4 December 2020.

The Chairman reported that she would be communicating with the working group shortly to convene a first meeting.

6. **REPORT OF THE UK INDEPENDENT EXPERT PANEL ON CORPORATE RE-DOMICILIATION**

The Chairman advised the Committee that there was no update to report on this item, as the Government has not yet published details of the consultation. It will remain a watching brief item.

7. **HOUSE OF LORDS FINANCIAL SERVICES REGULATION COMMITTEE – CALL FOR EVIDENCE ON GROWTH OF PRIVATE MARKETS**

The Chairman reported that on 2 July 2025, the House of Lords Financial Services Regulation Committee launched a Call for Evidence for its inquiry on the growth of private credit markets in the UK.

The inquiry opened on 1 July 2025 to examine whether the regulatory capital and liquidity reforms introduced post-2008 have reduced the banking sector's ability or willingness to lend, pushing risk away from the banking sector and towards private markets.

The deadline for submissions is 18 September 2025.

The Chairman raised with the Committee whether it would be appropriate for this Committee to submit a response to this Call for Evidence. It was agreed that the CLLS Regulatory Committee would be the more appropriate Committee to respond to this Call for Evidence.

Kevin Hart (CLLS) advised the Committee that the next meeting of the CLLS Regulatory Committee was scheduled for 17 July 2025 and that he would raise this item with that Committee.

8. UPDATES/CURRENT STATUS

8.1 National Security and Investment Act 2021 (P. ANGELL)

Andrew Taylor (Hogan Lovells International LLP), as alternate for Penny Angell, reported that on 23 June 2005, as part of a policy paper issued by the UK Government on the UK's Modern Industry Strategy, it was announced that there will be a 12-week consultation on updating the list of 17 sensitive sectors subject to mandatory notification. It was also stated that the UK Government will "shortly announce specific new exemptions to the mandatory regime".

Andrew noted that the 12-week consultation has not yet commenced but as soon as it does, and more information is published, Penny Angell will be in contact with the working group to discuss further steps.

8.2 CLLS ESG (E. GIDDINGS)

Emma Giddings reported that the recently scheduled meeting of the CLLS ESG Committee has been cancelled.

She noted that, on 25 June 2025, the UK Government launched three consultations as part of its efforts to modernise the UK's sustainability reporting framework. The consultations seek views on:

- Climate-related transition plan requirements – options to take forward climate-related transition plan requirements in order to provide the market with credible and decision useful information;
- Exposure drafts: UK Sustainability Reporting Standards – the Government's draft UK Sustainability Reporting Standards based on the International Sustainability Standards Board standards; and
- Assurance of sustainability reporting - the Government's proposal for greater regulatory oversight of third-party assurance services for sustainability-related financial disclosures.

All consultations will close on 17 September 2025.

Emma advised that, at the next meeting, the CLLS ESG Committee will consider whether it intends to respond to any of these consultations.

9. ANY OTHER BUSINESS

9.1 One Savings Bank plc v Waller-Edwards [2025] UKSC 22

The Supreme Court overturned the decision of the Court of Appeal, which in turn had upheld the decision of the High Court, ruling that a bank should be put on inquiry, requiring that bank to comply with the steps in the *Etridge* protocol, in non-commercial hybrid cases that include more than a de minimis surety element based on a 'bright line rule' rather than a 'fact and degree' test that had been applied by the lower courts.

9.2 Saipem S.P.A. and other companies v Petrofac Ltd and another company [2025] EWCA Civ 821

The Court of Appeal overturned the sanction of the High Court of a restructuring plan in respect of Petrofac Ltd after the plan was challenged by two major creditors.

This is a landmark judgement as it is the first to consider the issue of, and overturn a sanctioned plan on the grounds of, fairness in respect of the share of post-restructuring benefits between creditors, including creditors who are "out of the money" in the relevant alternative. Amongst other things, it demonstrated that the courts will scrutinise whether "new money" providers are receiving disproportion returns compared to the value they contribute to the restructuring.

On 16 July 2025, the Court of Appeal refused a request to appeal to the Supreme Court but it is expected that a request for leave to appeal will be submitted to the Supreme Court.

9.3 Nationwide Building Society v The Bank of New York Mellon, London Branch and another company [2025] EWHC 1046

The judge refused to grant summary judgement in favour of the first defendant, The Bank of New York Mellon, London Branch (BNYM), who had acted as trustee and paying agent in respect of notes that had not been listed as planned and resulted in a significant tax liability for the claimant, Nationwide Building Society, finding that the claimants law firm, the second defendant, had a real prospect of establishing that BNYM owed contractual and/or tortious duties, pursuant to a signing and closing agenda, to confirm that the notes had been listed.

The case will now proceed to trial.

9.4 Arbitration Act 2025

The Arbitration Act received Royal Assent on 24 February 2025 and will be brought into force through regulations at a date yet to be determined by the Secretary of State. However, it was noted that market participants had already raised questions around the need to consider the drafting of arbitration provisions in finance documents in anticipation of the Act coming into force and that there had been a notable increase in market participants seeking to include arbitration as a dispute resolution tool in finance transactions.

10. **NEXT MEETING**

The Committee was reminded that the next meeting will be held at 12:45 pm on 15 October 2025 at the offices of Herbert Smith Freehills Kramer LLP.

There being no further business, the meeting closed.