

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

**Minutes for the meeting held at 12.45 pm on 16 October 2024
at the offices of Hogan Lovells International LLP and also by Teams.**

Present: Sarah Smith (Baker & McKenzie LLP) (Chairman) – in person
Matt Dunn (Clifford Chance LLP) – in person
Edward Fife (Slaughter and May) – in person
Jeremy Stokeld (Linklaters LLP) – in person
Nigel Ward (Ashurst LLP) – in person
Penny Angell (Hogan Lovells International LLP) – in person
Nick May (Herbert Smith Freehills LLP), as alternate for Jake Jackaman –
in person
James Bresslaw (Simmons & Simmons LLP) – by Teams
Flora McLean (Freshfield Bruckhaus Deringer LLP) – by Teams
Nick Swiss (Eversheds Sutherland (International) LLP) – by Teams
Simon Roberts (A&O Shearman LLP) – by Teams

Attending: Kevin Hart (CLLS) (Legal Policy Analyst) – by Teams
Natalie Butchart (Baker & McKenzie LLP) (Secretary) – in person

1. APOLOGIES FOR ABSENCE APPROVAL OF MINUTES, ELECTION OF NEW COMMITTEE MEMBERS

1.1 Apologies for absence

The Chairman opened the meeting and reported that apologies had been received from Emma Giddings (Norton Rose Fulbright LLP), Mark Evans (Travers Smith LLP) and Presley Warner (Sullivan & Cromwell LLP).

1.2 Minutes of the last meeting

The minutes of the last meeting, held on 10 July 2024, were approved.

1.3 Election of New Committee Members

For this item on the Agenda the Chairman asked Nick May, in his capacity as an applicant, to step out of the meeting.

Following indications by Mark Evans and Jake Jackaman of their intentions to resign, the Chairman reported that advertisements for two positions on the Committee had been posted on the CLLS website. The deadline for applications was set as 20 September 2024.

The Chairman reported that two applications had been received from Nick May (Herbert Smith Freehills LLP) and Natalie Lewis (Travis Smith LLP) and copies of these applications had been provided by email to all members of the Committee for consideration ahead of the meeting.

The Chairman asked the Committee if there were any objections to the appointment of the two candidates to the Committee. No objections were raised and the appointment of both Nick May and Natalie Lewis to the Committee was confirmed.

The Chairman invited Nick May to rejoin the meeting.

2. **DIGITAL ASSETS (S. SMITH)**

2.1 **Law Commission Consultation Paper**

The Chairman reported that, on 11 September 2024, the [Property \(Digital Assets Etc.\) Bill](#) was introduced to the House of Lords, noting that the Bill had been drafted by the Law Commission, following delivery of its Final Report, at the request of the Ministry of Justice.

As is clear from the Committee's responses to the various consultations undertaken and publications issued by the Law Commission on this topic, certain members of the Committee have reservations as to the necessity of this Bill. Those reservations are amplified by case law and commentary in other common law jurisdictions which conclude that the existing common law/principles of equity adequately deal with digital assets and there is no need to create a third category of personal property, as proposed by the Bill. A number of these cases and one important commentary from a Federal Court judge in Australia were heard/published after the Law Commission published its Final Report and the draft Bill, but reinforce the importance of English law remaining aligned with the development of the law in this area in other common law jurisdictions.

The Chairman noted that the sponsoring Minister (Lord Ponsonby) has encouraged comments on the Bill and suggested that the Committee should respond to this request with their comments. The Committee agreed with the Chairman and the Chairman agreed to prepare a paper for submission.

The Chairman further noted that the judgment of the High Court in September 2024 in the case of *D'Aloia v Persons Unknown Category A and others* [2024] EWHC 2342 (Ch) (see item 11 below) has the potential to create a number of difficulties for the current law applicable to the custody arrangements for dematerialised assets such as shares and other financial instruments, particularly if the Bill goes forward.

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

The Chairman reminded the Committee that earlier in 2024 the decision in this case had been much discussed amongst both City corporate and finance lawyers and that Matt Dunn had been leading a working group of members of the Committee considering whether to appoint Leading Counsel and Junior Counsel to provide an opinion on certain issues raised by the case and/or whether the Committee should produce and publish a short guidance note (based on the opinion if one is obtained).

Matt Dunn reported that, after consulting with other lawyers in the market and gathering feedback from the London Finance Knowledge Lawyer Group, indications were that initial concerns had subsided and the decision in this case was not causing issues in practice.

The Committee members were asked whether the Committee should proceed with the appointment of Counsel to provide an opinion on this case or whether the Committee should instead produce its own guidance note on the case. It was agreed that the Committee should produce a guidance note on the case. Matt Dunn agreed that he and his colleague, Avril Forbes, would produce the note based on the existing draft instructions to counsel.

4. **COMPANIES HOUSE (J. STOKELD)**

The Chairman reminded the Committee that earlier in 2024 it came to the attention of a number of City law firms and Companies House that someone was inappropriately filing MR04 (statement of satisfaction) forms at Companies House in respect of outstanding charges. Following this event it became apparent that there were some misunderstandings in the market regarding the purpose of the Companies House Charges Register and the consequences for security of inappropriately filed statements of satisfaction at Companies House.

The FMLC subsequently approached the Committee with regards to producing an educational note on these matters outlined above. Jeremy Stokeld agreed to lead a sub-group of Committee members in this joint project with the FMLC.

Jeremy Stokeld reported that the sub-group of the Committee met with members of the FMLC for the first time on Friday 4 October during which the scope of the project was discussed and it was agreed that a short, focused educational briefing note would be produced. Natalie Butchart agreed to prepare a skeleton framework for the note and the sub-group plan to meet again before the end of October to discuss the framework and provide comments.

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

The Chairman reported that the Guide had been re-posted to the Committee's "page" on the CLLS website, after being removed for a period of time during which updates were made to the CLLS website.

The Chairman noted that the Guide had last been updated on 4 December 2020 and that a proposal had been made that the Committee consider whether updates to certain aspects of the Guide were now required.

The Committee agreed with this proposal. The Chairman requested volunteers for a working group on the project.

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

The Chairman reported that the Department for Business and Trade (DBT) had published the [Report of the UK Independent Expert Panel on Corporate Re-Domiciliation](#) on 14 October 2024. Representatives of the CLLS Company Law Committee and the CLLS Insolvency Law Committee were members of the Independent Expert Panel. The DBT's press release attached to the Report indicates that the Government intends to consult in due course on the details of the proposed regime for re-domiciled entities.

The Chairman advised that the Committee should consider responding to any such consultation, including in conjunction with other CLLS specialist committees.

7. **UPDATES/CURRENT STATUS**

7.1 **Potential Reform of the Financial Collateral Regulations (S. SMITH)**

The Chairman reported that there was no further update to report on this matter.

The Chairman had sent a follow-up email to the member of the legal group at the Funds, Markets and Securities section of H. M. Treasury but had not yet received a response. The Chairman plans to send a further follow up email.

7.2 **National Security and Investment Act 2021 (P. ANGELL)**

Penny Angell reported that on 10 September 2024, the Investment Security Unit in the Cabinet Office published an [Annual Report 2023-24](#) on the Act. The Report provides further detail on how the regime is functioning in practice. It examines the regime's second full year in operation and covers the period from 1 April 2023 to 31 March 2024 and so does not extend to the change of government in July 2024.

Penny noted that statistics in the report provided some comfort to the market. The turnaround time for review and clearance had decreased significantly and of the 34 offences recorded none had resulted in the issuance of penalties or criminal proceedings, indicating a pragmatic approach on the part of the UK Government.

Penny will seek feedback from the working group on whether there is appetite for appealing to the new UK Government to soften some of the impact for secured transactions (in particular exempting historic transactions and delaying the trigger for notification to the exercise of voting rights rather than acquiring the right to exercise votes).

7.3 **Prospectus Regime (E. FIFE; M. DUNN)**

There was nothing to report on this matter.

7.4 **ESG (E. GIDDINGS)**

The Chairman reported that Emma Giddings had attended the CLLS ESG Committee meeting on 24 September 2024. Emma had shared a written summary with the Chairman that advised that the main focus of discussion at the meeting was the [consultation](#) on the climate and sustainability disclosure aspects of the Public Offers and Admissions to Trading Regulations. She noted that the CLLS response to this consultation is being led by the Company Law Committee.

8. **ANY OTHER BUSINESS AND CLOSE**

- 8.1 The Chairman reported that she had been contacted by a representative from UK Finance to ask whether the Committee had considered any issues arising out of the following case, particularly in light of anticipated CCA reforms:

[CFI Finance Limited v Laser Trust and Moises Gertner \[2021\] EWCA 228 \(Civ\)](#) – the judge in this case stated that a settlement agreement in a schedule to a Tomlin order was theoretically capable of extending “credit” within the meaning of the Consumer Credit Act (CCA).

- 8.2 The following cases were noted to the Committee as ones of interest to their area of legal practice:

- [D’Aloia v Persons Unknown Category A and others \[2024\] EWHC 2342 \(Ch\)](#) – the High Court concluded, for the first time following a contested trial, that the stablecoin, USD Tether, constituted property for the purposes of the law of England and Wales. The case also required the court to consider the issue of tracing cryptoassets and the methodology to be applied. In this instance the court determined that the claimant had failed to demonstrate that he could, as a matter of fact, trace any of his misappropriated cryptocurrency to the relevant wallet on the relevant (Bitkub) platform. The analysis undertaken by the judge is difficult to reconcile with established case law on the treatment of pooled, fungible intangible assets such as shares and other financial instruments.
- [Wright and others v Chappell and others; Re BHS Group Ltd \[2024\] EWHC 2166 \(Ch\)](#) – this judgement brought to a conclusion the trial of the former BHS directors. The Court held the directors joint and severally liable for the increase in net deficiency of the company arising out of breaches of duty which caused the company to continue trading. The decision addressed the quantification of equitable compensation payable when a company director is found to have breached the modified *Sequana* duty. The Court confirmed that where the breaches of duty cause the company to continue trading, the starting point is that the misfeasant directors will be held jointly and severally liable for the increase in the net deficiency of the company, provided their breaches are an effective cause of the increase.
- [Standard Chartered Plc v Guaranty Nominees Ltd and other companies \[2024\] EWHC 2605 \(Comm\)](#) - this case concerned what should happen to preference shares (used as Tier 1 capital) when the reference rate used to determine dividend payments, USD LIBOR (and synthetic USD LIBOR), ceased to be published. Representatives of the holders of the preference shares argued that the end of USD LIBOR meant that a term should be implied into the terms of the preference shares that meant the shares should be redeemed. Standard Chartered argued that a reasonable alternative rate should be implied instead. The court agreed with Standard Chartered PLC.

9. **NEXT MEETING**

The Committee was reminded that the next meeting will be held at 12:45 pm on 15 January 2025 at the offices of Ashurst LLP.

There being no further business, the meeting closed.