

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

**Minutes for the meeting held at 12.45pm on 10 July 2024
at the offices of Norton Rose Fulbright 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
Emma Giddings (Norton Rose Fulbright LLP) – in person
Jeremy Stokeld (Linklaters LLP) – in person
Nigel Ward (Ashurst LLP) – in person
Penny Angell (Hogan Lovells International LLP) – by Teams
James Bresslaw (Simmons & Simmons LLP) – by Teams
Mark Evans (Travers Smith LLP) – by Teams
Jake Jackaman (Herbert Smith Freehills LLP) – by Teams
Flora McLean (Freshfield Bruckhaus Deringer LLP) – by Teams
Nick Swiss (Eversheds Sutherland (International) LLP) – by Teams
Presley Warner (Sullivan & Cromwell LLP) – by Teams
- Attending:** Natalie Butchart (Baker & McKenzie LLP) (Secretary) – in person

1. APOLOGIES FOR ABSENCE, APPROVAL OF MINUTES, COMMITTEE MEMBER RESIGNATION

1.1 Apologies for absence

The Chairman opened the meeting and reported that apologies had been received from Simon Roberts (A&O Shearman LLP).

1.2 Minutes of the last meeting

The minutes of the last meeting, held on 17 April 2024, were approved.

1.3 Committee member resignation

The Chairman announced that Mark Evans (Travers Smith LLP) had indicated his intention to resign as a member of the Committee. The Chairman thanked Mark for his service and contributions to the Committee and wished him well. It was noted that Mark would remain as a member of the Committee until his successor could be appointed. The Chairman confirmed that the process to find a replacement for Mark would be commenced in accordance with the CLLS guidelines for its specialist committees.

Postscript: Subsequent to the meeting, Jake Jackaman contacted the Chairman to indicate his intention to resign as a member of the Committee.

Advertisements for two positions on the Committee were posted on the CLLS website. The deadline for applications was set as 20 September 2024.

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

2.1 **Law Commission Consultation Paper**

The Chairman reported that the Committee had submitted its response, on 16 May 2024, to the Law Commission paper on [Digital assets and ETDs in private international law: which court, which law? Call for Evidence published 22 February 2024](#).



CLLS Financial Law
Committee_Respons

The Law Commission's final consultation paper on this matter is now awaited.

2.2 **UK Judicial Taskforce Consultation**

The Chairman confirmed that there were no further updates to report.

2.3 **Digitalisation Taskforce Interim Report**

The Chairman confirmed that there were no further updates to report.

2.4 **HM Treasury Papers on the regulatory framework for digital assets**

The Chairman confirmed that there were no further updates to report.

2.5 **FMLC Paper on Digital Assets – Governing Law and Jurisdiction**

It was noted that on 6 June 2024, the FMLC published a [paper](#) that reconsiders issues that it raised in a [paper](#) published in 2018, on governing law and related conflicts of law in the context of distributed ledger technology systems in light of the developments in the sector, and makes recommendations on how conflicts of law rules in this area should develop.

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

Matt Dunn, who is leading a working group of members of the Committee, reported that it had been agreed that the Committee should appoint Leading Counsel and a Junior Counsel to provide an opinion on certain issues raised by this case. Options for funding counsels' fees were discussed. It was noted that in previous similar situations, member firms represented on the Committee had divided the cost of fees between them. It was agreed that this proposal seemed a fair one and each Committee member would take this proposal away to their respective firms.

It was suggested that, as the CLLS Company Law Committee also has an interest in the contents of any counsels' opinion on this case, the Chairman of that committee be consulted on whether it would like to join the instructions to Counsel and whether any of its member firms, to the extent not also represented on this Committee, would be willing to share the cost of fees.

Matt Dunn agreed to contact the Chairman of the CLLS Company Law Committee in this regard and to report back to this Committee the resulting proposed allocation of the cost of counsels' fees per firm.

4. **COMPANIES HOUSE (S.SMITH)**

Following on from the erroneous filing of MR04 (statement of satisfaction) forms at Companies House in respect of outstanding charges during February 2024, several members of the Committee conducted a short survey of various jurisdictions to establish the requirements in place in those jurisdictions for filing notices of satisfaction of charges. Largely speaking the findings were that other jurisdictions have stricter requirements in this regard than is currently the case in England and Wales. Additional requirements include, for example, a need to deliver the instrument evidencing payment and satisfaction to release together with the statement of satisfaction or having the statement of satisfaction endorsed by the chargee.

The Committee then discussed whether it should lobby the new Government on this issue to propose similar stricter requirements. The Committee agreed that this was not a course of action it wished to pursue at this time. This decision was reached based on the following reasons: (i) the circumstances for this situation to occur again are limited; (ii) the resulting legal and practical risks are minimal because the fact that a notice of satisfaction is filed erroneously at Companies House does not mean that the relevant mortgage/charge has been discharged; (iii) there are other issues the Committee wishes to prioritise lobbying Government on; and (iv) there are greater concerns around the current capacity of Companies House to manage its existing functions, for example, the expedient registering of MR01 forms, which many firms have reported having recent issues with and gives rise to substantive risks if the mortgage/charge is not duly registered within the prescribed period.

It was agreed that the Committee would keep a watching brief on all registration issues at Companies House and continue to liaise with the FMLC on the matter, as considered appropriate, but no other action is to be taken at this time.

5. **UPDATES/CURRENT STATUS**

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

The Chairman confirmed that there were no further updates to report.

The Chairman noted that she intended to contact H.M. Treasury, now that the new UK Government was in place, in order to ascertain how quickly it intends to progress the revocation and replacement assimilated EU legislation listed in Schedule 1 to the Financial Services and Markets Act 2023, including The Financial Collateral Arrangements (No. 2) Regulations 2003.

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

It was noted to the Committee that on 18 April 2024, the UK Government issued its [response](#) to the Call for Evidence on the Act; and on 22 May 2024, the UK Government published updated [market guidance](#) in respect of the Act.

Penny Angell reported that, on 5 July 2024, the Committee working group on this Act held a short meeting during which it discussed when to approach the newly formed UK Government and which issues of concern in respect of the Act remain outstanding.

It was agreed that the working group would reconvene in October with a view to approaching the UK Government during the Autumn to:

- propose that any acquisition by a secured creditor as a result of an automatic enforcement provision in a legacy finance document entered into before a certain date should not trigger a mandatory notification, otherwise it could lead to secured creditors inadvertently committing a criminal offence;
- press for clarification on the application of paragraph 7 of Schedule 1 to the Act and the intention of the wording “for the purpose of preserving the value of the security, or the realising of it”; and
- to request that mandatory notification requirements be triggered by the disposal of shares by a secured creditor following enforcement and not upon earlier events such as the acquiring of the shares under the security document or the exercise of voting rights.

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

The Chairman confirmed that there were no further updates to report.

5.4 **ESG (E. GIDDINGS)**

Emma Giddings reported that the July meeting of the CLLS ESG Committee had been cancelled and that the next meeting is scheduled to take place in September.

Emma also provided an update on the [FCA Anti-Greenwashing Rule Guidance](#), which was published on April 2024. Emma confirmed that previous concerns that the Rule would extend to corporate lending did not seem to have been realised in the final draft of the Rule.

Emma also noted that the outcome of the Transition Finance Market Review Call for Evidence, which market participants including the Loan Market Association had responded to, and the potential for a UK Taxonomy similar to the EU taxonomy for sustainable activities were issues to keep a watch on.

5.5 **CLLS AI Committee**

The Chairman reported that the CLLS have established a new AI Committee and that Presley Warner has been appointed as a member. Presley provided an update on the work to date of the AI Committee.

6. **ANY OTHER BUSINESS AND CLOSE**

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

- **Re UKCloud Ltd (in liquidation) [2024] EWHC 1259 (Ch)**

The court was asked to give direction on whether a charge over IP addresses was fixed or floating. The court held that the charge was floating even though the security document stated that it was a fixed charge with a key factor in the decision being that there was a lack of control demonstrated by the chargee in practice.

- **Binyon and another v Suzerain Investment Holdings Ltd and others [2024] All ER (D) 14 (Apr)**

The court found that a debenture was void under section 859H of the Companies Act 2006 against the joint administrators of the company that had granted it due to a failure in the registration at Companies House. An amendment to the debenture was registered at Companies House and a certificate of registration issued, which usually serves as 'conclusive evidence' of registration. However, the court looked behind the certificate and identified a defect in the registration, i.e. that the original debenture that contained the charge clauses was not registered at Companies House, only an amendment agreement that did not contain any charging clause.

- **Mooij v Persons Unknown [2024] EWHC 814 (Comm)**

The court ruled that a judgment for non-proprietary relief could be made against unidentifiable crypto-currency defrauders. This decision went against the previous decision in *Boonyaem v Persons Unknown Category A* [2023] EWHC 3180 (Comm) with the judge drawing the distinction that in the later case the claimant had managed to effect service on the unidentifiable crypto-currency defrauders by both NFT airdrop into the target wallet where the lost cryptocurrency had been moved to and filing the documents at court.

- **Wright and another (liquidators of BHS Ltd and other companies (all in liquidation)) v Chappell and others [2024] EWHC 1417 (Ch)**

The judge upheld claims of wrongful trading and misfeasance brought under the Insolvency Act 1986 against two former directors of failed retail chain BHS and ordered that they each pay the liquidators £13.5 million. This is the first time that a misfeasance trading claim has been successfully recognised making it a significant legal development in insolvency law.

- **Re Sova Capital Ltd (in special administration) [2023] EWHC 452 (Ch)**

The High Court approved a so called 'credit bid' in an application by the special administrators of Sova Capital Ltd (in special administration) for a substantial portfolio of illiquid Russian securities. The transaction structure involved the transfer of securities in exchange for the release of a £233m claim against the estate. This judgment is the first court approval of an unsecured 'credit bid' transaction in the English courts.

7. **NEXT MEETING**

The Committee was reminded that the next meeting will be held at 12:45 pm on 16 October 2024 at the offices of Hogan Lovells International LLP.

There being no further business, the meeting closed.