



Financial Markets Law Committee (“FMLC”)

Finance and Technology Scoping Forum

Date: Thursday 10 May 2018

Time: 9.00am to 10.30am

Location: Herbert Smith Freehills, Exchange House, Primrose St, London, EC2A 2EG

In Attendance:

Cat Dankos (Chair)	Herbert Smith Freehills LLP
Antony Beaves	Bank of England
Kirsty Bell	Bank of England
Maya Chilaeva	
Jonathan Gilmour	Travers Smith LLP
Andrew Godwin (dial in)	Melbourne Law School
Siân Jones (dial in)	Gibraltar Financial Services Commission (“GFSC”)
Suhail Khawaja	Wilmington Trust
Ben Kingsley	Slaughter and May
Sarah Lewis	Cleary Gottlieb Steen & Hamilton LLP
Helen McGrath	Stripe
Angus McLean	Simmons & Simmons LLP
Simon Puleston Jones	FIA
John Salmon	Hogan Lovells International LLP
Nicole Sandler	Barclays Bank plc
Michael Sholem	Davis Polk & Wardwell London LLP
Ian Stevens	CMS Cameron McKenna Nabarro Olswang LLP
John Taylor	Queen Mary University of London
Venessa Parekh	FMLC
Thomas Willett	FMLC

Registered Charity Number: 1164902.

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Regrets:

Nikita Aggarwal	University of Oxford / Oxford Internet Institute
Geoffrey Burgess	Debevoise & Plimpton LLP
John Casanova	Sidley Austin LLP
Peter Chapman	Clifford Chance LLP
Raymond Cox QC	COMBAR (“The Commercial Bar Association”)
Simon Evers	Crowell & Moring
Scott Farrell	King & Wood Mallesons
Monica Gogna	Dechert LLP
Andrew Harvey	Global Financial Markets Association
Richard Hay	Linklaters LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Lewis Lee	CLS Services Ltd
Catrin Lewis	The Law Society
Oliver Linch	Shearman & Sterling (London) LLP
Philippa List	Societe Generale
Ciarán McGonagle	International Swaps and Derivatives Association (“ISDA”)
Adam Sanitt	Norton Rose Fulbright LLP
Simon Toms	Allen & Overy LLP
Simon Wright	Dechert LLP
Oliver Yaros	Mayer Brown International LLP

Minutes:

1. Introduction.

1.1. Cat Dankos opened the meeting and delivered a brief introduction.

2. Administration: the FMLC—a charity (Venessa Parekh)¹

2.1. Venessa Parekh described to the members the FMLC's transition from an independent body established by the Bank of England to its current status as a registered charity under the Charity Commission. She elaborated on the ways in which the FMLC's charitable remit has an impact on its work and conduct, including very closely-guarded requirements to be transparent and impartial.²

2.2. One member asked who typically donated to the FMLC. Ms Parekh clarified that a number of law firms, insurers and trade organisations, in addition to the Bank of England, support the FMLC.³

3. The Centre for Innovation and Regulation in Finance at Melbourne University – An Inter-Disciplinary Approach to the Challenges and Benefits of Technology (Andrew Godwin)

3.1. Andrew Godwin delivered to the participants a talk on the proposal for the establishment of a Centre for Innovation in Finance and Relegation (“the Centre”) at Melbourne University. It is intended that the Centre will research innovation in the financial sector and aim to provide thought leadership in the areas of FinTech in the Asia Pacific region.

3.2. Professor Godwin explained that the Centre will adopt an interdisciplinary approach such that it will study:

- i. law and regulation, from the point of view of government bodies attempting to regulate the FinTech sector;
- ii. financial decision making by consumers;
- iii. new technology and computer science, including how industry may utilise technology to fulfil their needs; and

¹ Please see Appendix I below.

² For further information as to how you can support the work of the FMLC, please contact Thomas Willett at forums@fmlc.org.

³ A comprehensive list of FMLC patron firms can be found at: <http://fmlc.org/about-the-fmlc/fmlc-patrons/>.

- iv. service science as a whole, including considerations of how the three perspectives described above fit together.
- 3.3. With regards to regulation, Professor Godwin outlined that the Centre hopes to:
- i. facilitate co-regulation, emphasising the need for regulators to work hand-in-hand with industry across topics such as data protection, new technologies, etc., to enable the development of forward-looking regulation;
 - ii. monitor new technologies to develop new use-cases and new models; and
 - iii. support the development of regulatory technology (“**RegTech**”).
- 3.4. Professor Godwin outlined that these aims would be achieved (i) through a focus on applied research, (ii) by supporting regulation which enables a fair and transparent FinTech ecosystem and protects against “dark FinTech”, (iii) through research in the area of online dispute resolution and (iv) by collaborating with stakeholders in the region and globally .
- 3.5. Following money laundering and other scandals in the banking sector in Australia, Professor Godwin noted that banks were keen to regain and maintain trust. He explained that trust has shifted from institutional-based trust to process-based trust where consumers are more in control and are prepared to draw on the services of a broad range of providers to meet their banking and financial needs.
- 3.6. When the floor was opened to discussion, attending members drew attention to their organisations’ affiliation with similar academic institutions and expressed interest in learning more from Professor Godwin.

4. **Gibraltar – Rock of DLT and token regulation (Siân Jones)⁴**

- 4.1. Siân Jones began her presentation on developing Gibraltar’s regulatory framework for distributed ledger technology (“**DLT**”) by charting the history of DLT in Gibraltar. A cryptocurrency working group comprising representatives of government departments and private banks was formed in 2015. It subsequently published two reports encouraging the government to explore the use of cryptocurrency and DLT further. In 2016 the Gibraltar Financial Services Commission (“**GFSC**”) was charged with developing cryptocurrency

⁴ Please see Appendix II below.

regulations that extended to DLT. In October 2017 the DLT Regulation was passed; it came into force on 1 January 2018.⁵

- 4.2. Ms Jones highlighted that the legislation was aimed towards businesses which use DLT to store or transmit assets of “value” belonging to others. In order to have as wide a scope as possible, the regulation incorporates a few definitions of DLT and “value”. She emphasised that the legislation provides a new way of regulating businesses that use nascent, evolving technology by establishing a purpose-designed, outcomes-focused and principles-based financial services regulation that is robust and regulated to the same standards as other financial services businesses.
- 4.3. Ms Jones identified the following three primary outcomes of the regulation: (i) to protect consumers; (ii) to protect Gibraltar’s reputation; and (iii) to stimulate economic growth. These outcomes were explained to be expressed in the nine principles of the legislation (please see slide 8 of Appendix II below).
- 4.4. Ms Jones then addressed Gibraltar’s token regulation which is still being drafted. She explained that the use of Public Token Offerings (“PTOs”) rapidly gained in popularity in 2017 as a means to raise finance. In September 2017 the GFSC released a public statement on PTOs but did not issue a warning as other jurisdictions had. In February 2018, the Gibraltar government announced that it will proceed with token regulation. It is expected that the legislation will be presented before parliament in the second quarter of 2018.
- 4.5. Ms Jones explained that the intended outcomes for the legislation were, again, to protect consumers and Gibraltar’s reputation and to support the safe use of tokens as a means of raising finance. Ms Jones further noted that the token regulation is designed to complement the DLT regulation through its three limbs of: (i) primary market promotion, sale and distribution; (ii) secondary market conduct; and (iii) investment and ancillary services.
- 4.6. Attending members asked questions concerning the number of applications the GFSC had received for DLT licenses and from which kind of business activities. Ms Jones stated that there have been approximately 30 applications since 1 January 2018, and that there is a large breadth of underlying business activities applying for authorisation. She also explained that the DLT regulation is applied in a waterfall, meaning that if a business is required to seek access under another regulation, the DLT regulation does not apply.

⁵

Financial Services (Investment and Fiduciary Services) Act, Financial Services (Distributed Ledger Technology Providers) Regulations 2017, available at: [http://www.gfsc.gi/uploads/DLT%20regulations%20121017%20\(2\).pdf](http://www.gfsc.gi/uploads/DLT%20regulations%20121017%20(2).pdf).

4.7. The launch of the Gibraltar Stock Exchange's Rock Token through a subsidiary of the Gibraltar blockchain exchange was also mentioned by a participant, who observed that while he could see the value in launching an exchange with the securities market, he wondered why the listing fee was payable in the Token and not in fiat currency. Another member mentioned that as there is no requirement to pay bank fees on token transfers as there is with fiat currency, this could be one advantage.

5. European Commission *FinTech Action Plan: For a more competitive and innovative European financial Sector* (Cat Dankos)

5.1. Cat Dankos briefly summarised the European Commission's FinTech Action Plan, which tackles the issues of licensing, authorisation and standardisation in FinTech to possible regulatory approaches to cryptocurrencies, cloud services, blockchain technology and cybersecurity.

5.2. Ms Dankos mentioned the key aspects of the plan to be:

- i. the mapping of FinTech facilitators set up by national supervisory authorities and inviting European Supervisory Authorities ("ESAs") to conduct further analysis and identify best practices by Q4 2018 and to issue guidelines where appropriate;
- ii. inviting ESAs to explore the need for guidelines on outsourcing to cloud service providers by Q1 2019;
- iii. the establishment of an E.U. FinTech lab to build capability and knowledge among regulators and supervisors; and
- iv. a public consultation on further digitisation of regulated information about companies listed on E.U. regulated markets in Q2 2018, including the possible implementation for a European Financial Transparency Gateway based on DLT.

5.3. A discussion was held regarding the concern that Europe's innovation and regulation of FinTech is moving too slowly compared to the U.S. and Asia, and that U.K's secession from the E.U. ("Brexit") could impede future developments in this space for the U.K.

6. Any other business.

6.1. Forum members noted that the next meeting of the Finance and Technology Scoping Forum will be held on Thursday 9 August between 2.00pm and 3.30pm.

Financial Markets Law Committee: a charity

(And what that really means)



Venessa Parekh, Research Manager

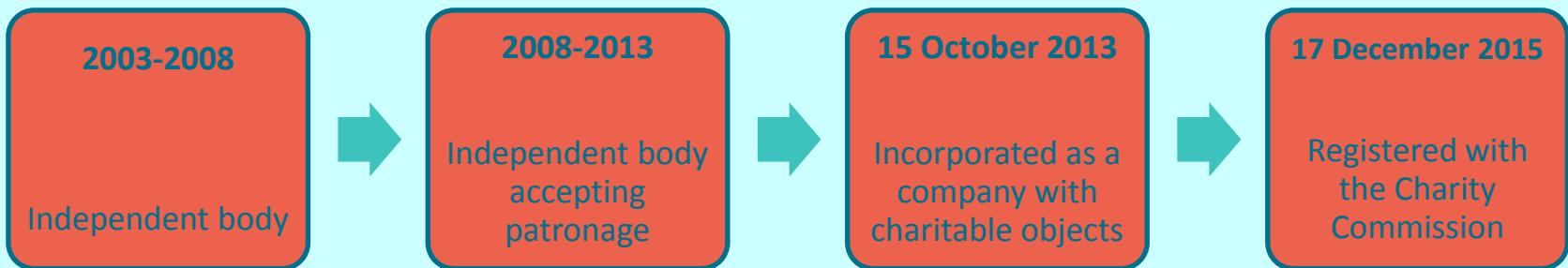
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The road to incorporation

- In **2003** the Bank of England established the FMLC as an independent organisation solely responsible for its own recommendations.
- In **2008**, the FMLC took a step towards greater independence by accepting funding from patrons.
- In **October 2013** the FMLC achieved structural self-sufficiency by **incorporating under charitable articles of association**.
- In **December 2015** the Charity Commission accepted the FMLC's application to **register as a charity**.



The FMLC's charitable remit

According to the charitable remit, the FMLC has a tripartite mission:

- to *identify* relevant issues (the **radar** function);
- to *consider* such issues (the **research** function); and
- to *address* such issues (the **public education** function).

Reduced legal uncertainty and risk is in the public good; the *radar* and *research* functions are somewhat self-explanatory in this regard. The *public education* function is a key aspect of the FMLC's status as a charity, and is addressed in the following ways:

- All FMLC papers, presentations/speeches and correspondence are freely available via the FMLC website.
- The FMLC seeks to raise the profile of its research with those who are best positioned to implement solutions.□This is achieved primarily through correspondence: the FMLC maintains active correspondence with regulatory and legislative groups around the world, particularly HM Treasury and the European Commission.
- Most FMLC events (with the exception of Patrons' events) are free to attend by members of the public.
- The FMLC also acts as a bridge to the judiciary, a task it carries out primarily by organising seminars to brief senior members of the judiciary on aspects of wholesale financial markets practice.

Transparency...

The FMLC follows the Charity Commission's guidance with the aim of maximising transparency. To this end, the FMLC:

- is registered with—and submits financial data to—the European Transparency Register;
- publishes full lists of both Patrons and Members on its website;
- is regularly audited by an independent accountancy firm;
- provides funding/expenditure breakdowns on request;
- publishes the minutes of Committee meetings to its website;
- publishes the agendas/minutes of every Scoping Forum meeting on its website;
- maintains policies governing conflict of interest, risk management and volunteer management; and
- remains independent from the Bank of England, government or legislative bodies and the financial sector itself..

...and impartiality

Since its creation the FMLC has been an independent body solely responsible for its own views and research. The Bank of England does not guide or submit input to the FMLC's reports. Anyone—including members of the general public—can raise issues of legal uncertainty for the Committee to investigate.

The FMLC does not comment on or seek to influence matters of policy. Issues relating to policy rather than solely to legal uncertainty are rejected.

The FMLC is dedicated to impartial consensus; for this reason the absolute maximum number of members from a single organisation is two individuals for a Scoping Forum, and one for a Working Group.

Scoping Forums have no *vires* to initiate projects or pass resolutions affecting the FMLC. Substantive issues of legal uncertainty are proposed by the Secretariat to the FMLC as a topic which may require further action.

Papers drafted by Working Groups are submitted to the entire Committee for review to ensure accuracy, objectivity and impartiality.

The FMLC is supported entirely by patronage. Patronage relates to funding only, there are no further contribution expectations or requirements and no special treatment for Patrons apart from seasonal social events.

Future endeavours/can you help?

The FMLC's educational remit is theoretically endless: there are always more financial markets participants, regulatory/government bodies and members of the public to keep informed of our work.

To that end, the FMLC is currently researching or pursuing the following:

- A full revamp of the website, focusing on accessibility and greater sharing of materials.
- Boosting attendance of FMLC events by members of the general public.

The FMLC is also considering new ways to disseminate its research, and in future may investigate:

- Recording/broadcasting solutions for events to allow greater access.
- Summarising and disseminating the FMLC's work in easily digestible media formats such as short videos or podcasts.

The FMLC is grateful for suggestions on how to amplify its message, better to serve its charitable function and the general public. Can you help?