

Felicity Toubé QC

QC 2011, Called to the Bar 1995

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Felicity Toubé QC specialises in domestic and cross-border insolvency and restructuring, banking and financial services, commercial litigation, civil fraud, and company law. Felicity appears in the Cayman Islands on a regular basis. She also acts as an expert in international proceedings in English law, as well as the law of other common law jurisdictions. She is asked to speak regularly at conferences, including at INSOL and Offshore Alert.

Felicity has acted in relation to most of the recent major corporate restructurings or insolvencies and related litigation including most recently in *Saad, Madoff, Lehman, Stanford, Rastogi, Nortel, SPhinX, Sigma, Landsbanki, MF Global, and Rafidain Bank*.

Felicity is widely recognised in all the legal directories as an expert in several fields. She is ranked by Legal 500 2018 as a Leading Silk for Insolvency, described as “*very clear-thinking and practical, a first choice for difficult and high-value insolvency matters*”.

Chambers UK Bar 2018 refers to her as “*incredibly bright and capable but also very down-to-earth and unbelievably accessible. I can’t recommend her highly enough.*”. Other comments include:

“She is user-friendly, commercial and responsive. She had some really tricky applications and she was so persuasive; it was the true art of advocacy in action.”

“She is highly personable, and has a keen intellect.”

“She’s very straight to the point and pragmatic.”

“Her oral advocacy is excellent; she masters the material and can create a very helpful rapport with the judge.”

Felicity also publishes widely across all her fields of experience, including as editor and contributor to Toubé on “International Asset Tracing in Insolvency” (OUP) and as a Board Member of *Insolvency Intelligence*.

Felicity is an ADR Group Accredited Civil & Commercial Mediator and sits on the INSOL International Mediation Panel.

Insolvency and Restructuring

Recently instructed in a variety of administrations and liquidations, including in respect of financial institutions (*Saad, Madoff, Lehman, Stanford, Nortel, SPhinX, Sigma, Landesbanki, MF Global, and Rafidain Bank*).

Recent cases include:

- ***Crumpler v Candey Ltd*** [2018] EWCA Civ 2256 (Court of Appeal) (Nature of ownership of monies paid into Court - floating charge)
- ***Re Lehman Brothers Europe Ltd*** [2017] EWHC 2031 (Ch) (Distribution to shareholders in administration by newly appointed director)
- ***Re LB Holdings Intermediate 2 Ltd (In Administration) and others*** [2017] EWHC 2032 (Ch) (Sanction of settlement of Waterfall III litigation)
- ***Chubb v Rafidain Bank*** Chancery Division (Companies Court), 27 July 2017 (unreported) (Declaration of meaning of scheme of arrangement)
- ***Leeds v Lemos*** [2017] EWHC 1825 (Ch) (privilege in bankruptcy does not pass to trustee in bankruptcy even in relation to "assets" documents)
- ***PricewaterhouseCoopers v SAAD Investments Co Ltd*** (In Official Liquidation) Privy Council (Bermuda), 17 November 2016 [2016] UKPC 33; [2017] 1 W.L.R. 953 (costs of aborted document production exercise not paid by office holders)
- ***Lehman Brothers Luxembourg Investments S.A.R.L. v Lehman Brothers UK Holdings Limited (In Administration)*** [2016] EWHC 617 (Ch) (Construction of loan document and subordination)
- ***Citicorp International Ltd v Castex Technologies Ltd*** [2016] EWHC 349 (Comm) (contents of notice for mandatory conversion notice)
- ***Indah Kiat International Finance Co BV*** [2016] EWHC 246 (Ch); [2016] B.C.C. 418 (adjournment of convening meeting for scheme of arrangement - requirements for convening order)
- ***Centaur Litigation SPC (In Liquidation) v Terrill*** [2015] EWHC 3420 (Ch) (freezing order - breach of duty by director)
- ***MF Global UK Ltd (In Special Administration)*** [2015] EWHC 2319 (Ch) [2016] Ch. 325 (denial of section 236 order against foreign respondents)
- ***Black Diamond Offshore Ltd v Fomento De Construcciones Y Contratas SA*** [2015] EWHC 1035 (Ch) (denial of stay of proceedings pending homologation proceedings in Spain; subsequent relief granted in favour of Black Diamond)
- ***Northsea Base Investment Ltd*** (and 7 others) [2015] EWHC 121 (Ch) (COMI of 7 Cypriot companies in England)
- ***Re Business Environment Fleet St*** [2014] EWHC 3540 (Ch) (powers of administrators to sell disputed assets)
- ***Pricewaterhouse Coopers v Saad Investments Company Limited*** [2014] UKPC 35 (ability of stranger to liquidation to set aside winding-up order)
- ***Singularis Holdings Limited v Pricewaterhouse Coopers*** [2014] UKPC 36 (extent of common law assistance in cross border insolvencies; existence of common law power to assist investigations as to assets)
- ***Re ARM Asset Backed Securities*** (EC Regulation and Luxembourg) [2014] EWHC 1097 (Ch)
- ***JSC Bank of Moscow and others v Kekhman*** (No: 4893 of 2012) [2014]
- ***London Scottish Finance*** [2013] EWHC 4047 (Ch) Ch D
- ***ARM Asset Backed Securities*** [2013] EWHC 3351 (Ch)
- ***Re Tambrook*** [2013]
- ***Re Nortel Networks NV; Re Lehman Brothers International (Europe)*** [2013] UKSC 52
- ***Lehman Brothers Special Financing v Carlton Communications*** [2012] EWCA Civ 419
- ***Re Nortel Bloom v The Pensions Regulator*** [2011] EWCA Civ 1124
- ***Lehman Brothers Special Financing v Carlton Communications*** [2011] EWHC 718 (Ch)
- ***Global Distressed Alpha Fund 1 Limited Partnership v PT Bakrie Investindo*** [2011] EWHC 256 (Comm)
- ***Re Nortel Bloom v The Pensions Regulator*** [2010] EWHC 3010 (Ch)

- ***Madoff Securities International v Financière Meeschaert*** [2010] EWHC 133 (Ch)
- ***Re Lehman Brothers International (Europe) v CRC*** [2010] EWHC 47
- ***Re Lehman Brothers International (Europe) v CRC*** [2009] EWHC 3228 (Ch); [2009] WLR (D) 371
- ***Re Stanford International Bank*** [2009] EWHC 1441 (Ch)
- ***Re Sigma*** [2009] UKSC 2
- ***Re Global Trader Europe*** [2009] EWHC 602 (Ch)

Banking and Finance

Recently instructed in a variety of issues including the client money litigation, as well as cases arising under ISDA Master Agreements, Facility Agreements and other security documents, and issues relating to schemes of arrangement (*Saad, Lehman, Stanford, SPhinX, Sigma, Landesbanki, MF Global, and Rafidain Bank*).

Recent cases include:

- ***Akers v Samba Financial Group*** [2014] EWHC 540 (Ch)
- ***London Scottish Finance*** [2013] EWHC 4047 (Ch)
- ***Lehman Brothers Special Financing v Carlton Communications*** [2012] EWCA Civ 419
- ***Lehman Brothers Special Financing v Carlton Communications*** [2011] EWHC 718 (Ch)
- ***Global Distressed Alpha Fund 1 Limited Partnership v PT Bakrie Investindo*** [2011] EWHC 256 (Comm)
- ***Madoff Securities International v Financière Meeschaert*** [2010] EWHC 133 (Ch)
- ***Re Lehman Brothers International (Europe) v CRC*** [2010] EWHC 47
- ***Re Lehman Brothers International (Europe) v CRC*** [2009] EWHC 3228 (Ch); [2009] WLR (D) 371
- ***Re Stanford International Bank*** [2009] EWHC 1441 (Ch)
- ***Re Sigma*** [2009] UKSC 2
- ***Re Global Trader Europe*** [2009] EWHC 602 (Ch)
- ***Black Diamond Offshore Ltd v Fomento de Construcciones y Contratas SA*** [2016] EWCA Civ 1141; [2017] 1 B.C.L.C. 196 (construction of bond documentation/insolvency events of default)
- ***Lehman Brothers Luxembourg Investments Sarl v Lehman Brothers UK Holdings Ltd Chancery Division*** (Companies Court), 21 March 2016 [2016] EWHC 617 (Ch); [2017] 1 All E.R. (Comm) 393; [2016] 2 B.C.L.C. 244 (Construction of subordination agreement – solvency issues)
- ***Citicorp International Ltd v Castex Technologies Ltd Queen’s Bench Division*** (Commercial Court), 24 February 2016 [2016] EWHC 349 (Comm) (issues of notice requirements in relation to convertible bonds)

Commercial Litigation and Arbitration

Appear in ongoing major commercial litigation, and in particular civil fraud claims.

Recent commercial cases and arbitrations include:

- **Crumpler v Candey Ltd** [2018] EWCA Civ 2256 (Court of Appeal) (Nature of ownership of monies paid into Court - floating charge)
- **Shaw v Breish** [2017] EWHC 2972 (Comm) (Collateral use of documents; variation of court appointed receivership)
- **UBS AG, London Branch v Glas Trust Corp Ltd** [2017] EWHC 1788 (Comm) (powers of Note Trustee)
- **Black Diamond Offshore Ltd v Fomento de Construcciones y Contratas SA** [2016] EWCA Civ 1141; [2017] 1 B.C.L.C. 196 (construction of bond documentation/insolvency events of default)
- **Lehman Brothers Luxembourg Investments Sarl v Lehman Brothers UK Holdings Ltd Chancery Division** (Companies Court), 21 March 2016 [2016] EWHC 617 (Ch); [2017] 1 All E.R. (Comm) 393; [2016] 2 B.C.L.C. 244 (Construction of subordination agreement - solvency issues)
- **Libyan Investment Authority v Codeis Securities SA Queen's Bench Division** (Commercial Court), 02 November 2016 [2016] EWHC 2773 (Comm) (powers of court appointed receiver where authority dispute in Libya)
- **RBG v Rastogi and others** [2014] EWHC 2316 (Ch)
- **Akers v Samba Financial Group** [2014] EWHC 540 (Ch)
- **Lehman Brothers Special Financing v Carlton Communications** [2012] EWCA Civ 419
- **Lehman Brothers Special Financing v Carlton Communications** [2011] EWHC 718 (Ch)
- **Re Nortel Bloom v The Pensions Regulator** [2010] EWHC 3010 (Ch)
- **Madoff Securities International v Financière Meeschaert** [2010] EWHC 133 (Ch)
- **Re Lehman Brothers International (Europe) v CRC** [2010] EWHC 47
- **Re Lehman Brothers International (Europe) v CRC** [2009] WLR (D) 371
- **Re Stanford International Bank** [2009] EWHC 1441 (Ch)
- **Re Sigma** [2009] UKSC 2
- **Re Global Trader Europe** [2009] EWHC 602 (Ch)
- **Citicorp International Ltd v Castex Technologies Ltd Queen's Bench Division** (Commercial Court), 24 February 2016 [2016] EWHC 349 (Comm) (issues of notice requirements in relation to convertible bonds)

Company

Recently instructed in a variety of company law cases including in relation to schemes of arrangement.

- Scheme proponent in the **Sphinx** case in the Cayman Islands
- **Global Distressed Alpha Fund 1 Limited Partnership v PT Bakrie Investindo** [2011] EWHC 256 (Comm)
- **Madoff Securities International v Financière Meeschaert** [2010] EWHC 133 (Ch)
- **Re Lehman Brothers International (Europe) v CRC** [2010] EWHC 47
- **Re Lehman Brothers International (Europe) v CRC** [2009] WLR (D) 371
- **Re Sigma** [2009] UKSC 2
- **Re Global Trader Europe** [2009] EWHC 602 (Ch)

Civil Fraud and Asset Recovery

Recent cases include:

- ***RBG v Rastogi and others*** [2014] EWHC 2316 (Ch)
- ***Akers v Samba Financial Group*** [2014] EWHC 540 (Ch)
- ***Madoff***
- ***Stanford***

Offshore

Felicity has appeared in the following foreign jurisdictions, the Cayman Islands (where she appears on a regular basis in the Grand Court), the BVI (including appearing in the BVI Court), Antigua, USA, EU (in particular realising property and unravelling frauds in France and Spain), Jersey, Guernsey and Isle of Man.

Also acts as an expert in international proceedings in English law, as well as the law of other common law jurisdictions. Currently retained in one case by the US Department of Justice as an expert on foreign law.

Recent cases include:

- ***Shaw v Breish*** [2017] EWHC 2972 (Comm) (Collateral use of documents; variation of court appointed receivership in relation to Libyan Investment Authority)
- ***Pricewaterhouse Coopers v Saad Investments Company Limited*** [2014] UKPC 35 (ability of stranger to liquidation to set aside winding-up order)
- ***Singularis Holdings Limited v Pricewaterhouse Coopers*** [2014] UKPC 36 (extent of common law assistance in cross border insolvencies; existence of common law power to assist investigations as to assets)
- ***Re Saad*** (Bermuda, Cayman, and Saudi Arabia)
- ***SPhinX*** liquidation (Cayman Islands)
- ***Re ARM*** (EC Regulation and Luxembourg) [2014] EWHC 1097 (Ch)
- ***Tambrook*** (Jersey)
- ***Madoff SIPA Trustee v Harley*** (Cayman Islands)
- ***Stanford International Bank*** (Antigua, Switzerland, and Canada)
- ***Global Distressed Alpha Fund 1 Limited Partnership v PT Bakrie Investindo*** [2011] EWHC 256 (Comm) (Indonesia)
- ***PricewaterhouseCoopers v SAAD Investments Co Ltd*** (In Official Liquidation) Privy Council (Bermuda), 17 November 2016 [2016] UKPC 33; [2017] 1 W.L.R. 953 (costs of aborted document production exercise not paid by office holders)

Awards and Recommendations

Junior Insolvency and Corporate Restructuring Barrister of the Year 2006

“Highly praised by instructing solicitors, who value her practical approach and exemplary work ethic. Focuses on corporate insolvency cases, many of them in European and Caribbean jurisdictions. ‘She is extremely responsive, is very quick to grasp the issues and delivers clear and pragmatic advice”

Chambers & Partners

“Typically instructed on a whole host of big-ticket commercial chancery disputes. She is very good on large-scale commercial matters and offers excellent client service. She has a sensible, no-nonsense approach and first-class technical skills”

“She is admired for the technical expertise she exhibits when handling a range of company law matters. A frequent choice for offshore work. She is an excellent lawyer who focuses on the key issues and provides sound commercial advice”

Legal 500

“Very clear-thinking and practical, a first choice for difficult and high-value insolvency matters”

Career

- 2015 Appointed to INSOL International Mediation Panel
- 2015 ADR Group Accredited Civil & Commercial Mediator
- 2012 Called to the Bar of the Cayman Islands (on the cases of SPhinX and Harley)
- 2011 Appointed Queen’s Counsel
- 1995 Called to the Bar of England and Wales
- 1994-1995 Taught Restitution with Prof Peter Birks from All Soul’s College, Oxford

Memberships

Commercial Bar Association

Chancery Bar Association

International Insolvency Institute

Publications

Editor of and contributor to ***International Asset Tracing in Insolvency*** (Toube, OUP 2009)

Board Member of ***Insolvency Intelligence***

Contributor to ***Insolvency Intelligence***

Editor of ***Totty & Moss on Insolvency*** case summaries

Case editor for ***Sweet & Maxwell Complete Insolvency Service*** CD Rom

Contributor to ***EC Regulation on Insolvency Proceedings*** (Moss, Fletcher and Isaacs)

Contributor to ***Lightman & Moss on Receivers and Administrators***
Author of chapter in ***Rowlatt on Surety***
Contributor to ***Halsbury's Laws of England*** Volume 3(2) (fourth edition, 2002 reissue)
Co-editor of ***Halsbury's Laws of England*** Volume 7 (fifth edition, 2013 reissue)
Author of ***Restitution for Public Lawyers*** [1996] JR 92
Author of ***Restitution under Article 85(2) EC Treaty - Can it be Done?*** (F Rose)
Author of ***Cross-Border Security Enforcement and the Conflict of Laws*** (F Rose)

Lectures and Seminars

Offshore Alert talk on ***Petrodel v Prest***
COMBAR talk on Insolvency (2013)
INSOL talk on Criminal elements of restructuring (2013)
Offshore Alert talk on who can be sued when an offshore investment fails (2012)
Chancery Bar Association talk on EC Regulation (2008)
ERA conference on SMEs (2007)
Jordans insolvency conference (2006)
Sweet and Maxwell insolvency conference (2005 and 2006)
Hawksmere insolvency conference (2005 and 2006)
INSOL Europe Conference (2003)
Euroforum Conference on Cross-Border Security (1997)

Education and Qualifications

1993-1994 Magdalen College, Oxford University, BCL, First Class
1990-1993 Magdalen College, Oxford University, BA

Prizes and Scholarships Princess Royal Scholarship (ICSL)

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Interests

Charity work (Trustee of Magdalen College Development Trust, Legal Friends of the Hebrew University, New West End Synagogue, and various other deaf, homeless, and educational charities)

Cooking, reading, cricket