

THE CITY OF LONDON LAW SOCIETY
INSOLVENCY LAW COMMITTEE
(the **Committee**)

Minutes of a meeting of the Committee held at Sidley Austin LLP,
Woolgate Exchange, 25 Basinghall Street, London EC2V 5HA
on Thursday 15 September 2011 at 12.30pm

Present: Hamish Anderson, Norton Rose LLP (Chair)
Patrick Corr, Sidley Austin LLP
Mike Woollard, SJ Berwin LLP
Jennifer Marshall, Allen & Overy LLP
Nigel Barnett, SNR Denton UK LLP
Stuart Frith, Stephenson Harwood
Byron Nurse, Eversheds LLP
Sophie Davies, Berwin Leighton Paisner LLP
Margaret Kemp, Hogan Lovells International LLP
Adrian Cohen, Clifford Chance LLP
Joe Windsor, Linklaters LLP

In attendance: Anne Willcocks, Insolvency Service
Nick Howard, Insolvency Service

Apologies: Rita Lowe, CMS Cameron McKenna LLP
Ian Hodgson, Slaughter and May
Stephen Gale, Herbert Smith LLP
James Roome, Bingham McCutchen LLP
Ken Baird, Freshfields Bruckhaus Deringer LLP
Ben Larkin, Berwin Leighton Paisner LLP
Tony Bugg, Linklaters LLP
Stephen Foster, Hogan Lovells International LLP
Chris Mallon, Skadden Arps Slate Meagher & Flom (UK) LLP

In attendance: Rebecca Oliver, Norton Rose LLP (secretary)

1 Opening of meeting

The Chairman opened the meeting and thanked Anne Willcocks and Nick Howard of the Insolvency Service for joining the meeting, and welcomed Byron Nurse as a new member of the Committee.

2 Minutes of the meeting held on 19 May 2011

The draft minutes of the meeting held on 19 May 2011 were approved.

3 Current consultations

The Chairman noted the following ongoing consultations:

Terms of reference	Working party/Action	Deadline

A. Modernisation of Insolvency Rules		Consultation on new set draft rules expected following consultations with stakeholders.
B. Proposed EU Regulation creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters - How should the UK approach the Commission's proposal?	Noted that R3 have responded, no time to submit separate response but Committee to keep under observation.	14 September 2011
C. BIS consultation on draft part 25 CA on registration of company charges	Financial Law Committee responding	30 September 2011
D. FSA consultation on Recovery and Resolution Plans	To discuss with Financial Law Committee whether a joint response might be useful.	9 November 2011
E. IS further consultation with stakeholders on restructuring moratorium	It was generally agreed following discussion with Anne Willcocks and Nick Howard that this might be better dealt with by contractual standstill provisions, e.g. for IT supply contracts crucial to all businesses' continuity.	IS continuing stakeholder discussions prior to further consultation

4 FMLC Addendum to Issue 108 paper - administration set-off and amendment to cut-off date

The Committee conveyed their views to Anne Willcocks and Nick Howard that legislation is needed to resolve the inconsistencies arising from the application of the administration set-off rules and payment of post-administration liabilities owed to counterparties by a company in administration.

5 Ministerial Statement of Edward Davey on Improving Transparency and Confidence in Pre-Packaged Sales in Administrations - 31 March 2011

Anne Willcocks and Nick Howard noted that further consideration was being given to the suggested legislative changes to pre-pack administrations following comments from stakeholders on the draft statutory instrument, in particular regarding the definition of "connected parties". It was suggested by the Committee that it would be preferable to treat all pre-pack administrations in the same way regardless of whether a sale was being made to connected parties, since (i) the concern to be dealt with was justification of the best price being obtained and this was a risk in all cases, and (ii) it was extremely difficult to define "connected parties" in a way that insolvency practitioners could have certainty as to whether the requirement to seek creditor approval applied or not. It was suggested that consideration be given to the US approach of introducing a period following the pre-packaged sale agreement giving third parties an option to better the sale price.

It was agreed that pre-packaged administration sales served a useful purpose and to overly restrict their use would inevitably increase the number of companies instead entering liquidation.

6 Insolvency Service Corporate Plan 2011 - 2015 published July 2011

Noted by the Committee.

7 Business Minister Edward Davey published the Government's response to the call for evidence concerning its review of debt advice and personal insolvency (19 July 2011).

Noted by the Committee.

8 HM Treasury and the Department for Business, Innovation and Skills jointly publish a summary of responses to the government's review of consumer credit and personal insolvency, which it launched, by means of a call for evidence, in October 2010 (19 July 2011)

Noted by the Committee.

9 UNCITRAL publishes judicial guide to model law on insolvency proceedings

Noted by the Committee.

10 The Investment Bank Special Administration (England and Wales) Rules 2011 (SI 2011/1301) (Rules) came into force on 30 June 2011

Noted by the Committee.

11 The Committee noted the following recent cases:

Belmont Park Investments PTY Ltd v BNY Corporate Trustee Services Ltd and another [2011] UKSC 38

New Cap Reinsurance Corporation Ltd and another v Grant and others [2011] EWCA Civ 971
Finnerty and another v Clark and another [2011] EWCA Civ 858

Re Frontsouth (Witham) Ltd and another [2011] EWHC 1668 (Ch)

12 Any other business

Independent Commission on Banking - final recommendations on reforms to improve stability and competition in UK banking published 12 September 2011. The Committee noted in particular the following recommendations:

(i) Bail-in: resolution authorities to have a primary bail-in power allowing them to impose losses on long-term unsecured debt in resolution before imposing losses on other non-capital, non-subordinated liabilities. Resolution authorities should also have a secondary bail-in power to enable them to impose losses on all other unsecured liabilities, if necessary.

(ii) Depositor preference: FSCS insured depositors should rank ahead of other creditors to the extent that those creditors are either unsecured or only secured with a floating charge.

13 Next meeting

Thursday 17 November 2011, to be hosted by Stuart Frith, Stephenson Harwood at 8.30am.

14 Close of business

There being no further business the meeting closed.