

**CITY OF LONDON LAW SOCIETY**

**FINANCIAL LAW COMMITTEE**

MINUTES of a meeting held at the offices of Lovells Hogan at Atlantic House, Holborn Viaduct, London EC1A 2FG on Wednesday 19 May 2010 at 12.45pm.

---

Present: Geoffrey Yeowart (Lovells Hogan – Host)  
Dorothy Livingston (Herbert Smith LLP – Chairman)  
John Naccarato (Cameron McKenna)  
Matthew Denning (alternate) (Sidley Austin)  
James Curtis (Denton Wilde Sapte)  
Sarah Paterson (Slaughter & May)  
James Richards (alternate) (Travers Smith)  
Richard Calnan (Norton Rose)  
Nigel Ward (Ashursts)  
Ian Falconer (alternate) (Freshfields)  
Mark Campbell (Clifford Chance)

In attendance: Rachael Hoar (Herbert Smith LLP – taking minutes)

**1. APPROVAL OF MINUTES AND APOLOGIES FOR ABSENCE**

The minutes of the last meeting which had taken place on 3 March 2010, had previously been circulated and, subject to minor amendments, were approved.

Apologies for absence were received from Robin Parsons (Sidly Austin), Mark Evans (Travers Smith), Philip Wood (Allen & Overy), Simon Roberts (Allen & Overy), Alan Newton (Freshfields), John Davies (Simmons & Simmons), David Ereira (Linklaters) and Richard Bethell-Jones (Allen & Overy).

**2. FINANCIAL STABILITY**

**2.1 Government proposals on Effective Resolution Arrangements for Investment Banks**

It was noted that further progress on the government's proposals on effective resolution arrangements for investment banks were awaited, next steps being either a white paper or draft legislation.

## 2.2 **Financial Services Act 2010 and Banking Act 2009**

The Committee was reminded that the Financial Services Act 2010 was now in force and that the Act included two amendments to the Banking Act 2009 in relation to which the Committee had raised concerns:

- 2.2.1 amendments relating to property transfer powers, including the power to create liabilities (section 21); and
- 2.2.2 a wide power allowing the Treasury or the Secretary of State to amend or appeal any enactment in consequence of this Act (which, it was noted, is wider than the equivalent power in the Banking Act 2009) (section 24(3)).

## 2.3 **Banking Liaison Panel**

It was reported that the work of the Banking Liaison Panel was continuing. In particular, recommendations for the code of practice were evolving.

## 3. **INSOLVENCY**

### 3.1 **Insolvency Law Reform Consultation**

It was reported that a meeting had taken place with the Insolvency Service in March and that various technical issues relating to the moratorium proposals had been discussed. (The proposals are intended to address anomalies between the different UK insolvency regimes rather than making major amendments to the regimes.) The focus of the meeting was on developing a new court moratorium regime for CVAs for larger companies and schemes of arrangement. It was further reported that the Insolvency Service expects to start consulting on developed proposals during the summer.

*Afternote: A further Consultation Paper has been published and a working party, chaired by Geoffrey Yeowart, is preparing a response. The Insolvency Service has proposed a further meeting.*

### 3.2 **Insolvency Rules Modernisation**

The Committee was reminded that the amended Insolvency Rules had come into force on 6 April 2010, including the new regime for approval of pre-administration expenses. The Committee was also reminded that further changes to the Insolvency Rules were expected to come into force in April 2011.

## 4. **REGISTRATION OF CHARGES**

### 4.1 **Consultation on registration of charges under the Companies Act 2006**

The Committee was reminded that a consultation paper on proposed changes to the regime for registration of charges had been issued by DBIS on 12 March 2010. A working party of the Committee had met to discuss the consultation and a draft response paper had been prepared and circulated by Richard Calnan.

The working party response paper addressed four main principles:

- 4.1.1 that all charges created by English companies should be registrable unless registration is prohibited by other legislation;

- 4.1.2 that registration should be effected by sending the charge document to Companies House electronically;
- 4.1.3 that failure to register within 21 days should render the security created by the charge void; and
- 4.1.4 that the registration of charges created by overseas companies should be regulated by the law of their place of incorporation and not by the law of any part of the UK.

Final comments on the draft response should be sent to Richard Calnan by 28 May 2010.

*Afternote: The paper was submitted and is available on the CLLS website. There has been a further dialogue with DBIS.*

#### 4.2 **Scottish floating charges and the BAD Act 2007**

It was reported that further discussions with relevant Scottish bodies and Companies House were continuing in relation to Part 2 of the Bankruptcy and Diligence etc (Scotland) Act 2007 which was not yet in force. The Committee was reminded that if implemented in its current form, the Act would result in a floating charge created under the law of a jurisdiction outside Scotland being ineffective under Scottish law over Scottish assets falling within the scope of the charge unless it was registered under Part 2. Proposals were therefore being explored to avoid the need for a floating charge registered at Companies House also to be registered under Part 2. This would be helpful (as it would avoid the need for double registration) but it would not resolve all issues which concerned the Committee.

Geoffrey Yeowart and Dorothy Livingston are members of a working group set up to advise the Scottish Government as well as, DBIS and Companies House Cardiff representatives.

*Afternote: A meeting of the working group to consider draft recommendations will take place in Edinburgh at the end of September.*

#### 5. **EXECUTION OF DOCUMENTS – HILMI & ASSOCIATES LIMITED V 20 PEMBRIDGE VILLAS FREEHOLD LIMITED**

It was reported that a Court of Appeal case (*Hilmi & Associates Limited v 20 Pembridge Villas Freehold Limited* [2010] EWCA Civ 314) had caused some further debate on execution mechanics among firms. It was noted that the court had had to consider the degree of execution formality required for a notice given under the Leasehold Reform, Housing and Urban Development Act 1993 and there was some debate as to whether the case could be seen to have wider implications for the signing of formal documents.

*Afternote: Following discussions with the Company Law Committees it has been concluded that the case does not affect the CLLS note on electronic completions.*

#### 6. **COMPANIES ACT 2006 (S39) AND ULTRA VIRES DOCTRINE**

It was noted that a further draft of the working party note on the effect of the Companies Act 2006 on the ultra vires doctrine and the practice of checking constitutional documents had recently been circulated for comment. Final comments should be sent to Mark Campbell as soon as possible in order that the note could be finalised.

## **7. BRUSSELS 1 REGULATION – GREEN PAPER**

*Afternote: The EU Commission has commissioned a survey to which a number of firms have responded. The CLLS does not have access to the quantitative information sought.*

## **8. ROME I REGULATION – ARTICLE 14 ASSIGNMENTS**

The Committee was reminded that the Ministry of Justice had issued a consultation on the assignment provisions (Article 14) of Rome I. The working party's response paper had been approved by the Committee and had been sent to the Ministry of Justice on 12 March 2010. The Committee would watch for further developments.

*Afternote: The Commission is proposing to appoint experts to consider current laws and practice in the Member States and report.*

## **9. CONSERVATIVE/LIBERAL COALITION GOVERNMENT AGENDA**

It was noted that the new coalition Conservative-Liberal government agenda had been issued and that there are various banking items which may be of interest to the Committee including:

- 9.1.1 the introduction of a banking levy;
- 9.1.2 reforms to encourage competition;
- 9.1.3 a commission to examine splitting retail from investment banking (to be chaired by the Chancellor of the Exchequer); and
- 9.1.4 putting the Bank of England in charge of macro-prudential regulations.

Proposals to establish a new Green Investment Bank were also noted.

## **10. CLLS MATTERS**

Various CLLS ancillary matters were discussed.

## **11. AOB**

### **11.1 ABI Investors Covenant Conformity Project**

The Committee was informed that the launch meeting for this project was due to take place on 21 June 2010. James Curtis agreed to attend on behalf of the Committee and to report back in due course.

## **12. CLOSE**

There being no further business, the meeting was closed.