

CITY OF LONDON LAW SOCIETY

FINANCIAL LAW COMMITTEE

MINUTES of a meeting held at the offices of Denton Wilde Sapte, One Fleet Place, London, EC4M 7WS on Wednesday 3 December 2008 at 12.45pm.

Present: Dorothy Livingston (Herbert Smith LLP - Chair) (DL)
Geoffrey Yeowart (Lovells LLP) (GY)
John Davies (Simmons and Simmons)
Clare Watson (Linklaters – alternate for David Ereira)
James Curtis (Denton Wilde Sapte)
Richard Bethel-Jones (Allen & Overy)
Sarah Paterson (Slaughter & May)
James Richards (Travers Smith – alternate for Mark Evans)

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 17 September 2008, had previously been circulated and (subject to minor comments) were approved.

Apologies for absence were received from David Ereira, John Naccarato, Mark Evans, Richard Calnan, Philip Wood, Alan Newton, Robin Parsons, Mark Campbell, Simon Roberts and Nigel Ward.

2. COMPANIES ACT 2006

2.1 Scottish Register of Floating Charges

Nothing new to report (see September minutes for details). GY would aim to prepare a draft letter explaining the Committee's concerns early in the new year.

2.2 Overseas Company Regulations

It was noted that these Regulations are expected to be laid by Parliament in December. (*Afternote: has not happened and questions about the deemed location of incorporeal assets has arisen*)

3. FINANCIAL STABILITY – BANKING BILL

The working party had met recently to discuss the Consultation on the SRR Safeguards and Code of Practice published in November. Of key concern were the unsatisfactory definitions used in the draft legislation e.g. security interests, netting, set-off, the netting provisions generally and the power to cherry-pick under the partial transfer provisions.

The working party would aim to prepare its response to the consultation before Christmas and in any event before the consultation ends on 9 January 2009.

(Afternote: done and numerous other papers: Bill expected to receive royal assent (2nd February and come into effect on 20th February 2009)

4. INSOLVENCY

4.1 Insolvency Rules Modernisation

GY reported that a new draft of the Insolvency Rules had been prepared and submitted to the Insolvency Rules Committee. A response was not expected until after Christmas. The Insolvency Service are still aiming to bring the new Rules into force in October 2009.

4.2 Enterprise Act Review

GY reported that no legislative changes were expected to arise from the review of the Enterprise Act. However two issues were still under review: (i) the amount of the prescribed part under s176A of the Insolvency Act 1986 and whether it was set at an appropriate level; and (ii) improvements to the CVA regime which would form part of a larger review and may be subject to legislative changes.

5. EU CAPITAL REQUIREMENTS DIRECTIVE (ART 122A)

The Committee was reminded that in the revised draft Article 122a, the retained originator exposure had been dropped from 10 to 5%, and syndicated loans and credit default swaps were expressly excluded. In light of this, the Committee should maintain a watching brief but there was no need for a working group at present.

6. SETTLEMENT FINALITY DIRECTIVE AND FINANCIAL COLLATERAL ARRANGEMENTS DIRECTIVE

Nothing to report.

7. PRINCIPLES-BASED LEGISLATION

The Committee decided that this was more relevant to the Regulatory and Corporate Committees. No further action required.

8. ISDA PROPOSAL FOR EUROPEAN NETTING DIRECTIVE (APRIL 2008)

Nothing to report. The Committee will keep a watching brief.

9. UNIDROIT CONVENTION ON INTERMEDIATED SECURITIES

Not discussed other than to note that work on finalising and adopting the Convention would continue in 2009.

10. EUROPEAN CONTRACT LAW REFORM – PROPOSAL FOR A COMMON FRAME OF REFERENCE

Nothing to report. The Committee will keep a watching brief.

11. AOB

- 11.1 It was reported that the EHYA were planning to hold a conference on insolvency law reform in March. GY had been invited and was likely to attend.
- 11.2 The Committee noted that many issues were coming to light from the ongoing financial crisis and that the Committee should consider those which fell within its remit over the coming months.

12. CLOSE

There being no further business, the meeting was closed.