

Monthly E-Briefing (Issue 34 – May/June 2012)

Associates Forum and Land Law Committee vacancies

The Associates Forum has a vacancy to fill as a result of the resignation of an existing member and is therefore seeking applications from prospective new members.

[Click here](#) for details.

The Land Law Committee has three vacancies to fill as a result of the resignation of three existing member and is therefore seeking applications from prospective new members.

[Click here](#) for details.

Applications for both Committees close on 31 August 2012

Submissions/documents

The **Commercial Law Committee** recently responded to the Government's Call for Evidence about the impact, possible costs and benefits of the European Commission's proposed Regulation for a Common European Sales Law (CESL). A copy of the call for evidence can be found [here](#). The response ([read here](#)) expressed a number of concerns regarding the proposed CESL initiative.

The **Company Law Committee** recently responded to the EC document "Consultation on the future of European Company Law". [Click here](#) for the consultation page and [click here](#) for the response. The purpose of the consultation was to collect views from all interested stakeholders on the future of European company law. The response made a number of points, including that further harmonisation of the European company law framework is not required, and that "EU company law should respect each member state's right to determine how to balance the differing interests of shareholders, creditors and directors and to structure companies' boards and whether employee involvement is a company law matter."

The Committee also recently provided written evidence to the Treasury Select Committee's Inquiry into Corporate Governance in Systemically Important Financial Institutions. [Click here](#) for the Committee webpage and [click here](#) for the response. As the response noted, the Treasury Select Committee's inquiry had a broad scope and included some questions that go to the heart of corporate governance of UK companies. The response drew the Committee's attention to the important distinction between the role and objectives of the company law framework that regulates the governance of UK companies generally and the role and objectives of the regulatory framework that governs financial institutions.

The Committee also recently responded to the discussion paper published by the Department for Business, Innovation and Skills in January 2012 entitled "Providing a flexible framework

which allows companies to compete and grow: discussion paper.”

([click here](#) for the response.) The discussion paper set out the work that the Government is already doing to improve the company law framework in support of its objective of providing a framework that gives companies the flexibility to compete and grow effectively. The Committee’s response re-emphasised some points made in the Committee’s earlier submissions and expressed the view that by dealing with these points the Government could achieve an effective reduction in unnecessary costs and other burdens affecting UK incorporated companies of all sizes.

The **Financial Law Committee** recently commented on the Register of Floating Charges Technical Working Group’s August 2011 Report to Scottish Government. ([click here](#) for the response.) The Committee’s response strongly considered that floating charges should continue to be registerable under a unified UK registration regime of the kind contemplated in the new version of Part 25 of the Companies Act 2006 proposed by BIS.

The **Insolvency Law Committee** recently responded to the European Commission consultation on the future of European Insolvency Law. ([Click here](#) for the consultation page and [click here](#) for the response.) The consultation sought to give interested parties the opportunity to present their views on the future of European insolvency law, in order to assist the Commission to determine whether and how the existing legal framework should be improved and modernized. The submission responded in detail to the specific questions in the consultation questionnaire.

The **Land Law Committee** recently commented on the Law Commission’s report “Making Land Work: Easements, covenants and profits à prendre” (“Report”). ([Click here](#) for the paper and [click here](#) for the comments. The Law Commission’s principal recommendations were for the simplification of the law relating to the creation of easements and profits, the introduction of a new way to attach obligations to land, the streamlining of a number of land registration procedures and the extension of the jurisdiction of the Lands Chamber of the Upper Tribunal. The Land Law Committee thanked the Commission for the report which it considered “an excellent, erudite and thorough analysis of this crucial area of property law”.

The **Regulatory Law Committee** recently responded to the HMT paper “Policy options for implementing the Alternative Investment Fund Managers Directive” ([Click here](#) for the consultation paper and [click here](#) for the response). The informal discussion paper highlighted and invited initial views on a number of the high level policy decisions that will need to be taken as part of the transposition of the Alternative Investment Fund Managers Directive (AIFMD) in the UK. The Committee responded in detail to the consultation.

The Committee also recently responded to the Commission’s Green Paper on shadow banking. ([Click here](#) for the consultation paper and [click here](#) for the response.) The objective of the green paper was to consult stakeholders on shadow banking issues: definition, risks and benefits, the need for stricter monitoring and regulation, outstanding issues and next steps. The response stated, *inter alia*, that, as a headline observation, “while the Green paper outlines in high level terms the Commission’s initial thinking in this area, the Commission has not yet articulated a clear scope or objective for any more detailed regulatory proposals which may follow. Before seeking to develop any such more detailed proposals for further regulation, therefore, we strongly support the idea that a clear regulatory policy objective or set of objectives should be explained.”

The **Training Committee** also recently responded to the LETR’s Discussion Paper 01/2012 (“Key Issues (1): Call for Evidence”). ([Click here](#) for the consultation paper and [click here](#) for the response). The response was supplemental to, and was intended to be read in the context of, the CLLS’s earlier submission dated 17 February 2012. The Call for Evidence described some of the key strengths and weaknesses of the current Legal Education and

Training (LET) system, and sought to establish a relatively high-level consensus on what needs to change. The paper focussed on the following issues: The extent to which the overarching structure of LET is or is not 'fit for purpose'; any weaknesses that exist in respect of the existing stages in LET, and the extent to which there is willingness to consider radical change in the LET system; and the extent to which the objectives and assumptions of the Legal Services Act (LSA) and the moves to Outcomes Focussed Regulation may be creating new or additional problems for the regulation of LET. The CLLS response stressed the need for the review not to reduce overall training standards, and described the Committee's vision for the future of education and training in the legal services sector as being a series of integrated, graduated developmental pathways.

Furthermore, the CLLS submitted a response to the LSB's paper "Approaches to Quality". ([Click here](#) for the consultation paper and [click here](#) for the response.) The consultation provided an overview of quality risks within legal services, and suggested existing or alternate regulatory interventions which might be usefully deployed to better assure quality. It sought to create a "methodology to underpin a proposed approach to quality". The CLLS paper stated that the LSB had highlighted correctly the factors of technical competence and client care as the key determinants of a 'service of quality'. It supported the LSB's general proposition that regulatory interventions should be targeted at the needs of those lay personal consumers who are vulnerable for want of risk management skills and resources. However, it raised a concern about how the LSB consultation exercise could be reconciled with the LETR.

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