

CITY OF LONDON LAW SOCIETY

FINANCIAL LAW COMMITTEE

MINUTES of a meeting held at the offices of Norton Rose, 3 More London Riverside,
London SE1 2AQ on Wednesday 3 March 2010 at 12.45pm.

Present: Richard Calnan (Norton Rose – Host)
Dorothy Livingston (Herbert Smith LLP – Chairman)
Geoffrey Yeowart (Lovells) (GY)
John Davies (Simmons and Simmons)
Brian Gray (Linklaters)
Robin Parsons (Sidley Austin) (RP)
James Curtis (Denton Wilde Sapte)
Mark Campbell (Clifford Chance) (MC)
Richard Bethel-Jones (Allen & Overy)
Sarah Paterson (Slaughter & May)
Mark Evans (Travers Smith)
Philip Wood (Allen & Overy)
Alan Newton (Freshfields Bruckhaus Deringer)

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 2 December 2009, had previously been circulated and, subject to minor amendments, were approved.

Apologies for absence were received from David Ereira (Linklaters), John Naccarato (Cameron McKenna), Simon Roberts (Allen & Overy) and Nigel Ward (Ashursts).

2. FINANCIAL STABILITY: BANKING ACT 2009, SPECIAL RESOLUTION REGIME

2.1 Investment Banks

The Committee was reminded that the consultation on whether to have a separate insolvency regime for investment banks had completed and published responses. A CLLS working party meeting was due to take place on 3 March 2010 to discuss a further Treasury consultation document on this subject.

Afternote: the Committee's response is now available on the CLLS website alongside those of the Insolvency Law and Regulatory Law Committees, with whom the working party liaised in the preparation of their submission.

2.2 Financial Services Bill and Banking Act 2009

The Committee was reminded of the drafting concerns which had been raised in relation to clauses 33 and 36 of the draft Financial Services Bill relating to trusts and amendment and repeal powers. It was reported that David Ereira had represented the Committee at a parliamentary scrutiny committee to discuss the Bill, but that the Treasury did not consider any drafting changes were required in any of the areas identified by the Committee. The Committee would keep a watching brief and be prepared to raise these points again in the future.

Afternote: the Bill was passed in the "wash-up" process prior to the election containing these provisions.

2.3 Banking Liaison Panel

It was reported that the revised draft Code of Practice was still in progress and that the small company netting issue was still under consideration by the Banking Liaison Panel.

3. FINANCIAL STABILITY: FSA, BASEL AND EU CONSULTATION ON CROSS BORDER CRISIS MANAGEMENT

It was reported that the various FSA, Basel and EU activities were continuing. However, it was felt that the issues were highly technical and complex and that it was more appropriate for these to be taken forward by the BBA and other trade and regulatory bodies, rather than this Committee. Therefore no further action currently required.

4. INSOLVENCY

4.1 Insolvency Reform Consultation

It was reported that following closure of the Insolvency Reform Consultation, a stakeholders' meeting had taken place on 18 January 2010 at which GY, DKL and RP had attended on behalf of the Committee. The focus was on developing a new court moratorium regime for CVAs for larger companies and schemes of arrangement. It was noted that the moratorium proposals are intended to address anomalies between the different UK insolvency regimes rather than making more major amendments to the regimes. It was also reported that a further consultation on these reforms may be released in the summer. The next stakeholders' meeting to discuss the proposals was due to take place on 15 March 2010.

Afternote: there have been further requests from the Insolvency Service for the views of the Committee working party and a further meeting took place on 21st April. The Insolvency Service expects to start consultation on developed proposals during the summer.

4.2 Insolvency Rules Modernisation

The Committee was reminded that amendments to the Insolvency Rules were due to come into force on 6 April 2010.

5. ROME I REGULATION – ARTICLE 14

The Committee noted that a meeting of the Rome I working party had taken place on [22] January 2010 to discuss the Ministry of Justice consultation on the assignment provisions (Article 14). It was also reported that an exchange of views had taken place between two academics, Trevor Hartley and Roy Goode. A further meeting of the working party was due to take place on 4 March 2010 at which Trevor Hartley and Roy Goode would be present. Following the meeting a draft response to the consultation would be circulated to the Committee for approval.

Afternote: The draft response paper on Article 14 of Rome I has been approved by the Committee and submitted and is available on the CLLS website.

6. EUROPEAN CONTRACT LAW REFORM

There was nothing to report in relation to the ongoing European contract law reform activities. The Committee would continue to keep a watching brief.

7. ABI INVESTORS COVENANTS FOR BONDS PROJECT

The Committee was reminded that the ABI had recently sought support for a proposal to standardise covenants in bonds to assist investors when reviewing bond documentation. A brief preview meeting of the proposal had been arranged by the ABI and some draft language had been prepared for those discussions. Members of the Committee who attended the meeting felt that the proposals were still at a very early stage and could not yet express a view on the proposals or indeed the language proposed. Some favoured standardisation, while others were concerned that "one size fits all" could be a straight-jacket for businesses which was excessive. The Committee would keep developments under review.

8. EXECUTION OF DOCUMENTS – MERCURY TAX GROUP CASE

The Committee was reminded that a Law Society guidance note on execution of documents by virtual means had recently been published which largely accorded with the note which had been prepared by the joint working party (JWP) of the CLLS Financial and Company Law Committees and the Law Society Company Law Committee in May 2009. It was further noted that some minor amendments had been made to the JWP note and that this was now available on the CLLS website.

9. COMPANIES ACT 2006 (S39) AND ULTRA VIRES DOCTRINE

The Committee was reminded that a draft 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 by MC for comment. Work was on-going on this.

Afternote: A revised draft note has been circulated to the working party.

10. REGISTRATION OF CHARGES

10.1 English and overseas companies and general review of revisions to registration and filing requirements

The Committee was informed that the DBIS consultation paper on proposed amendments to the charge registration regime and filing requirements was expected shortly.

(See minutes from 2 December 2009 for further details.)

Afternote: This has been published and the initial working party meeting is on 28th April.

10.2 Scottish floating charges and the BAD Act

In relation to floating charges over Scottish assets, GY reported that two meetings of the Technical Working Party set up by the Scottish Parliament had been held. They were attended by representatives of the Registrars of Scotland, Scottish Law Commission, Scottish Law Society, CSCB, DBIS, Companies House, CLLS and FMLC. Discussion focused on Part 2 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 which had not yet been brought into force. 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 Scots law over Scottish assets falling within the scope of the charge unless it was registered under Part 2. Proposals are 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 but not resolve all issues. Further meetings are scheduled.

11. CASES TO NOTE

The following cases were noted but were not discussed due to shortness of time:

11.1 Lehman Special Financing Inc v BNY Corporate Services Ltd and Perpetual Trustee Co Ltd v BNY Corporate Services Ltd

11.2 Enviroco Ltd v Farstad Supply A/S

11.3 Cattles Plc v Welcome Financial Services Ltd & Ors and Mills & Ors v HSBC

12. CLOSE

There being no further business, the meeting was closed.