

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

Minutes of a meeting of the Committee held at Hogan Lovells International LLP  
Atlantic House, Holborn Viaduct, London EC1A 2FG  
on Thursday 20 January 2011 at 8.30pm

**Present:** Hamish Anderson, Norton Rose LLP (Chair)  
Ken Baird, Freshfields Bruckhaus Deringer LLP  
Alex Wood, Hogan Lovells International LLP  
Nigel Barnett, SNR UK LLP  
Rita Lowe, CMS Cameron McKenna LLP  
Jennifer Marshall, Allen & Overy LLP  
James Roome, Bingham McCutchen LLP  
Tony Bugg, Linklaters LLP  
Mike Woollard, SJ Berwin LLP  
Gabrielle Ruiz, Clifford Chance LLP

**Apologies:** Ian Hodgson, Slaughter and May  
Stephen Foster, Hogan Lovells International LLP  
Ben Larkin, Berwin Leighton Paisner LLP  
Adrian Cohen, Clifford Chance LLP  
Stephen Gale, Herbert Smith LLP  
Chris Mallon, Skadden Arps Slate Meagher & Flom (UK) LLP  
Patrick Corr, Sidley Austin LLP  
Stuart Frith, Stephenson Harwood

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

**1 Opening of meeting**

The Chairman opened the meeting.

**2 Minutes of the meeting held on 18 November 2010**

The draft minutes of the meeting held on 18 November 2010 were approved.

**3 Current consultations**

The Chairman noted the following ongoing consultations:

<b>Terms of reference</b>	<b>Working party</b>	<b>Deadline</b>
A. Modernisation of Insolvency Rules Stakeholder meeting 31 January 2011	To be attended by Ken Baird and Jennifer Marshall	

B. EC (Responsible service: DG Competition . A3): Consultation on the Review of Rescue and Restructuring aid Guidelines.	No response required.	2 February 2011
C. Consultation on technical details of a possible European crisis management framework	No response required.	3 March 2011

#### 4 Administration expenses

The Committee discussed the need to rectify the uncertainties relating to administration expenses, especially in the light of the recent Nortel pensions decision. It was agreed that representatives of the Committee attending the Insolvency Service stakeholder meeting on 31 January would suggest amendment of the definition of a provable debt to overcome the possibility of liabilities falling in to a %black hole+because they arise after the date of the administration unless they are treated as an expense of the administration. Subject to that amendment, the Committee favoured a formulation of the rules recognising three categories of administration expenses, namely:

- (i) liabilities undertaken by the administrators;
- (ii) liabilities incurred through using the asset of a third party for the benefit of the creditors (the Lundy Granite principle) but, where appropriate, apportioned according to the actual use of the asset; and
- (iii) a list of specified other expenses deserving super-priority.

#### 5 Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010 (SI 2010/3023): passed 21 December 2010, coming into force 1 February 2011

Noted by Committee.

#### 6 The Financial Markets and Insolvency (Settlement Finality and Financial Collateral Arrangements) (Amendment) Regulations 2010

The Committee noted that on 16 December 2010, HM Treasury published an amended version of the draft Regulations following the previous consultation.

#### 7 Government response to consultation on insolvency statistics

Noted by Committee.

#### 8 The Committee noted the following recent cases:

*Bloom and others v Pensions Regulator (Nortel, Re)* [2010] EWHC 3010 (Ch)

*Robert Hunter Kelly and Jonathan Peter Sumpton (Liquidators of PAL SC Realisations 2007 Limited) v Inflexion Fund 2 Limited Partnership, Autocruise Co-Investment Limited Partnership* [2010] EWHC 2850 (Ch)

*Stephen and another v QMD Hotels Ltd* [2010] ScotsCS CSOH\_168 (16 December 2010)

*Gibraltar Residential Properties Ltd v Gibralcon 2004 SA* [2010] EWHC 2595 (TCC)

*Irwin v Lynch and another* [2010] EWCA Civ 1153

*Clark and another v Finnerty and another* [2010] EWHC 2538 (Ch)

*Pensions Regulator: Lehman Brothers Pension Scheme* (TM5916)

**9 Any other business**

None.

**10 Next meeting**

Thursday 17 March 2011, to be hosted by Patrick Corr, Sidley Austin LLP at a time to be confirmed.

**11 Close of business**

There being no further business the meeting closed.