

**THE CITY OF LONDON LAW SOCIETY**

**INSOLVENCY LAW COMMITTEE**

(the **Committee**)

Minutes of a meeting of the Committee held at Slaughter and May, One Bunhill Row, London EC1Y 8YY, on 19 March 2008 at 12.45 pm

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- Present:** Hamish Anderson, Norton Rose LLP (Chairman)  
Stephen Gale, Herbert Smith LLP (Deputy Chairman)  
Neil Griffiths for Mark Andrews, Denton Wilde Sapte LLP  
Ken Baird, Freshfields Bruckhaus Deringer  
Tony Bugg, Linklaters LLP  
Ian Fletcher, Stephenson Harwood  
Ian Hodgson, Slaughter and May  
Mark Hyde, Clifford Chance LLP  
Chris Mallon, Skadden, Arps, Slate, Meagher & Flom (UK) LLP  
Gordon Stewart, Allen & Overy LLP  
Sandy Shandro, University College London
- Apologies:** Peter Fidler, CMS Cameron McKenna LLP  
Stephen Foster, Lovells LLP  
James Roome, Bingham McCutchen LLP
- In attendance:** Susan McFetrich, Norton Rose LLP  
Robert Leeder, City of London Law Society

**1 Opening of meeting**

The Chairman opened the meeting and introduced Robert Leeder to the Committee. Robert has recently joined the City of London Law Society as its Policy and Committees Coordinator.

The draft minutes of the meeting held on 17 January 2008 were approved.

**2 Consultation on financial stability and depositor protection**

At the Committee's last meeting, a working party had been formed to keep a watching brief for an imminent consultation on legislation for a special bank insolvency regime.

It was noted that HM Treasury, the Bank of England and the Financial Services Authority had subsequently launched the consultation, with a reply date of 23 April.

The working party had met to discuss the consultation paper, and their broad conclusion was that a special resolution regime or a special insolvency procedure for banks is neither necessary nor desirable.

The working party's draft response to the consultation had been circulated to all Committee members (and also to the CLLS Financial Law Committee's working party). Committee members were asked to submit any comments to the working party by 7 April. The working party will then finalise and submit the response.

**3 The European High Yield Association's latest submission to HM Treasury, and the correspondence between the CLLS Insolvency and Financial Law Committees and The Insolvency Service about contractual termination provisions**

The letter approved by the Committee at its previous meeting had been sent to the Insolvency Service.

The Chairman reported that the Committee's suggestion of limiting reliance on contractual termination provisions for insolvency had prompted a debate with the CLLS Financial Law Committee, who had written to the Insolvency Service to express their opposition to the suggestion. However, since the Director of Policy at the Insolvency Service had subsequently informed both CLLS Committees that the suggestion is not currently under consideration, it was agreed that there is no need to progress the debate at this stage.

It was noted that the European High Yield Association had made a further submission to HM Treasury about insolvency law reform (letter dated 22 February 2008).<sup>1</sup>

#### **4 Liquidation expenses - the Insolvency (Amendment) Rules 2008**

Section 1282 Companies Act 2006, which inserts the new section 176ZA in the Insolvency Act 1986, comes into force on 6 April 2008 by virtue of the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007.

The Insolvency (Amendment) Rules 2008 (which give floating charge-holders and preferential creditors some control over the extent to which a liquidator can use floating charge assets to fund litigation expenses) come into force alongside section 1282. It was noted that the Insolvency Service had published on its website a revised (and apparently the final) draft of these rules just a few days before the meeting, although there was no indication that they had been laid before Parliament yet<sup>2</sup>. The revised draft contains numerous textual changes from the consultation draft on which the Committee submitted comments on 12 October 2007, although these appear to be mostly drafting rather than substantive changes.

It was noted that 3 other statutory instruments had been made. All are in force on 6 April 2008.

- The Insolvency (Amendment) Regulations 2008 (SI 2008/670) extend the Insolvency Regulations 1994 to permit administrators and administrative receivers to pay unclaimed dividends into the Insolvency Services Account upon the dissolution of the company. They also amend the 1994 Regulations to ensure that payments into the Insolvency Services Account (in any insolvency procedure) do not include monies which are *bona vacantia* and thus payable to the Crown.
- The Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) (No. 2) Order 2008 (SI 2008/672) increase the fee payable to the Secretary of State of Business in respect of his functions of authorising and monitoring insolvency practitioners from £2,500 to £2,550. They also provide for new fees in relation to the operation of the Insolvency Services Account.
- The Insolvency Proceedings (Fees) (Amendment) Order 2008 (SI 2008/714) provide for increases in line with inflation of various fees.

#### **5 Empty property business rates relief for companies in administration**

It was noted that, following the announcement by the Department for Communities and Local Government that secondary legislation was to be made to provide for companies in administration to have a permanent exemption from empty property rates, the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 had been made and come into force on 1 April 2008.

#### **6 The European Commission's report on its consultation on the reorganisation and winding up of credit institutions**

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<sup>1</sup> Published on the website of the European High Yield Association ([www.ehya.com](http://www.ehya.com)).

<sup>2</sup> Final form subsequently published; stated to have been laid before Parliament on 14 March 2008 (SI 2008/737).

Following the discussion at the last meeting, the Deputy Chairman communicated his understanding that no further submissions were being accepted by the European Commission.

In any event, the matter had to some extent been superseded by the publication of the European Commission's consultation report, which indicated that a feasibility study is to be undertaken by mid-2008, with further proposals planned for mid-2009. This will be kept under review.

## **7 UNCITRAL's work on the treatment of enterprise groups in insolvency**

Sandy Shandro reported that he had made initial contact with Jenny Clift at UNCITRAL to express the Committee's interest in this project. It was agreed that Sandy will find out whether there are any practical ways in which the Committee can assist with the project, perhaps through liaison with other bodies.

Meanwhile, the Committee will maintain its watching brief on developments.

## **8 Administration set-off and expenses**

The Committee noted with interest the paper published by the Financial Markets Law Committee (FMLC)<sup>3</sup> identifying areas of uncertainty in relation to rule 2.85 of the Insolvency Rules 1986 (dealing with set-off in administration) and setting out proposals to deal with them.

It was agreed to form a working party to consider the FMLC's paper and (if appropriate) to respond to it by producing the Committee's own paper. The Chairman undertook to inform the FMLC's Secretary of the Committee's interest, and also to try to find out whether the Insolvency Service proposes to address the issues raised in the FMLC paper<sup>4</sup>.

## **9 Solicitor insolvency practitioners**

Those members of the Committee who are licensed to practise as insolvency practitioners in England had received a letter from the Solicitors' Regulation Authority informing them of its intention to transfer its role as their regulator to another recognised professional body.

Since it affects only a small proportion of City insolvency lawyers and it has not been raised with the CLLS by the SRA, it will not be dealt with as a Committee matter. Individual members who are affected by it will express their personal concerns directly to the SRA.

## **10 The European Commission's Green Paper on the effective enforcement of judgments in the EU**

It was noted that this Green Paper seeks views on how to improve the transparency of debtors' assets in the European Union, and suggests measures such as the introduction of a European assets declaration. Since it affects litigation on a broader level than merely insolvency, others are likely to be more directly interested in it.

## **11 Approval of the Committee's business plan for 2008**

The draft business plan circulated with the agenda was approved. A copy will be placed on the CLLS website.

## **12 Attendance by Stephen Speed and Stephen Leinster at the Committee's next meeting**

The Chairman was pleased to confirm that Stephen Speed (Chief Executive, Insolvency Service) and Stephen Leinster (Director of Policy, Insolvency Service) had accepted an invitation to attend the Committee's May 2008 meeting.

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<sup>3</sup> Financial Markets Law Committee Issue Paper 108, available on [www.fmlc.org](http://www.fmlc.org).

<sup>4</sup> The Chairman wrote to Joanna Perkins (FMLC) and Stephen Leinster (The Insolvency Service) on 20 March 2008.

Ideas for agenda items were floated. It was agreed to concentrate on issues of principle.

**13 Any other business**

This meeting was Ian Fletcher's last meeting before retiring from the Committee. The Chairman thanked Ian for his contribution to the work of the Committee over the years.

**14 Details of next meeting**

The next meeting will be held at 12.45 pm on Tuesday 20 May, at the London office of Denton Wilde Sapte LLP.

**15 Close of meeting**

There being no further business, the meeting closed.