

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

Minutes of a meeting of the Committee held at King & Wood Mallesons SJ Berwin LLP,
10 Queen Street Place, London EC4R 1BE on Thursday 18 September 2014 at 8.30a.m.

Present: Jennifer Marshall, Allen & Overy LLP (Chair)
Mike Woollard, King & Wood Mallesons SJ Berwin LLP
Adrian Cohen, Clifford Chance LLP
Dominic McCahill, Skadden Arps Slate Meagher & Flom (UK) LLP
Stuart Frith, Stephenson Harwood LLP
Ben Klinger, Sidley Austin LLP
Peter Wiltshire, CMS Cameron McKenna LLP
Peter Sherwood, Herbert Smith Freehills LLP
Margaret Kemp, Hogan Lovells International LLP
Jo Windsor, Linklaters LLP
Ben Larkin, Jones Day

In attendance: Helen Pattinson, Allen & Overy LLP

Apologies: Hamish Anderson, Norton Rose Fulbright LLP
Joe Bannister, Hogan Lovells International LLP
Catherine Balmond, Freshfields Bruckhaus Deringer LLP
James Roome, Bingham McCutchen LLP
Tony Bugg, Linklaters LLP
Laurence Elliott, Herbert Smith Freehills LLP
Giles Boothman, Ashurst LLP
Ian Johnson, Slaughter and May
Rebecca Oliver, Norton Rose Fulbright LLP
Byron Nurse, Dentons UKMEA LLP

1 Opening of meeting

The Chairman opened the meeting.

2 Minutes of the meeting held on 15 May 2014

The draft minutes of the meeting held on 15 May 2014 were approved.

3 Current consultations

The Chairman noted the following ongoing consultations:

Terms of reference	Discussion	Deadline
A. Consultation by the European Commission on the contributions of institutions to resolution financing arrangements	It had been agreed no response would be submitted by CLLS.	14 July 2014
B. BIS consultation: Ratification of the Convention on International Interests in mobile equipment and Protocol thereto on matters	Noted that a response had been submitted and thanks given to working group (Adrian Cohen and Dominic McCahill).	Response submitted 11 August 2014

specific to aircraft equipment	The CLLS response stated that it was not necessary to adopt Alternative A (modelled on Chapter 11): whereby an IP would have to give up possession of aircraft to secured creditors unless, after a 60-day waiting period, all defaults had been cured. The same approach had been adopted by R3.	
C. HM Treasury consultation on Transposition of the Bank Recovery and Resolution Directive and Draft Banks and Building Societies (Depositor Preference and Priorities) Order 2014.	<p>Noted that a joint submission of the Insolvency, Regulatory and Financial Law sub-committees of the CLLS would be submitted.</p> <p>Points to note were: amendments would be required to the safe-harbour provisions and to provide for the priority of depositors.</p> <p>Jennifer Marshall would feedback further at the next meeting.</p>	28 September 2014
D. Insolvency Service consultation on the continuity of supply of essential services to insolvent businesses	<p>Noted that Jo Windsor had prepared a first draft response. This had already been circulated to the other working group members (Hamish Anderson and Jennifer Marshall) and would be distributed more widely for comments shortly.</p> <p>The general consensus was that the proposal was a good idea but there were a number of issues to flag up with the IS, notably in relation to personal guarantees and whether they were required at all (as never called on), practical issues and what was actually meant by a personal guarantee. The idea of a simple guarantee template was mooted.</p> <p>Whether suppliers could be prevented from putting a company onto a new (extortionate) tariff after going into insolvency was an issue the proposed amendments had attempted to address, but not at all levels.</p>	7 October 2014
E. Insolvency Service consultation on Insolvency Proceedings: Review of debt relief orders and the bankruptcy petition limit	Noted that Stuart Frith kindly agreed to do a selective response to this consultation (with Jo Windsor).	8 October 2014
F. EBA consultation paper on draft Regulatory Technical Standards	This was one to watch out for. Dorothy Livingstone would be	11 October 2014

on independent valuers (EBA/CP/2014/18)	feeding back to Jennifer Marshall and Joe Bannister.	
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4 Insolvency Rules stakeholder meeting attended by Catherine Balmond

Jennifer Marshall reported that Catherine Balmond had attended a stakeholder meeting on the changes to the Insolvency Rules on 30 July. It was agreed that Catherine should report back further at the next meeting.

5 R3 policy breakfast: The future of Insolvency Practitioner regulation

Jennifer noted that she had been unable to attend this meeting but would follow up with R3 and report back at the next meeting.

6 Small Business, Enterprise and Employment Bill introduced

The question of whether it was still worth objecting to certain proposals in this Bill in relation to the assignment of claims and the pursuit of directors was discussed. It was agreed we were now at the lobbying stage and Hamish had some good contacts.

7 Graham Review into Pre-pack Administration: Report to the Rt Hon Vince Cable MP June 2014

Noted by Committee. It was anticipated the next step would be a new SIP 16, with scope for legislation if not complied with voluntarily. No one was aware of a panel to review a proposed pre-pack having been set up. Mike Woollard would add to the agenda for the next meeting of the R3 General Technical committee.

8 HM Treasury consultation outcome on secondary legislation for non-bank resolution regimes and new orders

Noted by Committee. Dorothy Livingstone was looking at this; most relevant to securitisation opinions.

9 Council of the European Union has adopted implementing regulation 663/2014, which amends the Annexes to Regulation (EC) No 1346/2000 on insolvency proceedings – in force 19 July 2014

It was noted that the Annexes had now been amended to reflect new insolvency procedures in various European jurisdictions. The time it takes to update the Annexes was commented on and the fact that, for now, it was not clear whether, pending an updated Annex, a new procedure fell within the ambit of the Regulation.

10 Proposal for a Regulation of the European Parliament and of the Council amending Council Regulations (EC) No 1346/2000 on insolvency proceedings – Draft recitals

It was noted that the IS would be calling a stakeholder meeting in the next few weeks. There had been some suggestions as to how to break the stalemate between the Parliament and the Commission.

11 Practice direction on insolvency proceedings 2014 – in force 29 July 2014

Noted by Committee.

12 Law Commission’s 12th Programme of law reform: insolvency and consumer aspects

Noted by Committee. The proposals were aimed at safeguarding consumers who paid for goods in advance e.g. via the purchase of gift cards.

13 New versions of SIP 3: effective 1 July 2014

Noted by Committee.

14 Some recent cases

The Committee noted the following recent cases:

Burgo Group (Judgment) [2014] C-327/13

Lavery v British Gas Trading [2014] EWHC 2721 (Ch)

Fibria Celulose S/A v Pan Ocean Co. Ltd [2014] EWHC 2124

15 Any other business

Dutch insolvency reforms were coming into force 1 Jan 2015 – a hybrid of the best of English schemes and US chapter 11. They were being marketed as fast, effective and with the ability to deal with group companies; just a COMI shift required (Jo Windsor).

No one knew when the judgment on SAAD was expected.

The Spanish courts have been keen to take on multi-jurisdictional corporate insolvencies even where the COMI link is tenuous. Perhaps a reflection of the economic times.

16 Next meeting

Thursday 20 November 2014, to be hosted by Stuart Frith, Stephenson Harwood at 8.30am.

17 Close of business

There being no further business the meeting closed.