

THE CITY OF LONDON LAW SOCIETY INSOLVENCY LAW COMMITTEE
MINUTES OF THE MEETING HELD AT 100 BISHOPSGATE, LONDON EC2N 4AG
AND BY VIDEO CONFERENCE CALL
ON TUESDAY 14th SEPTEMBER 2021 AT 8.30am

Present: Jennifer Marshall, Allen & Overy LLP (chair)
 Catherine Balmond, Freshfields Bruckhaus Deringer LLP
 Katharina Crinson, Freshfields Bruckhaus Deringer LLP
 Hamish Anderson, Norton Rose Fulbright LLP
 Giles Boothman, Ashurst LLP
 Jo Windsor, Linklaters LLP
 James Roome, Akin Gump Strauss Hauer & Feld
 Joe Bannister, Hogan Lovells International LLP
 Dominic McCahill, Skadden Arps Slate Meagher & Flom (UK) LLP
 David Ereira, Paul Hastings (Europe) LLP
 Simon Thomas, Goodwin Procter (UK) LLP
 Ben Larkin, Jones Day
 Peter Wiltshire, CMS Cameron McKenna LLP
 Ross Miller, Simmons & Simmons LLP
 Ian Fox, Dentons UK and Middle East LLP
 Megan Sparber, Slaughter & May

Apologies: David Ereira, Paul Hastings (Europe) LLP
 Kevin Pullen, Herbert Smith Freehills LLP
 Ben Klinger, Seddons Law LLP
 Byron Nurse
 Adrian Cohen, Clifford Chance LLP
 Gabrielle Ruiz, Clifford Chance LLP
 Ian Johnson, Slaughter & May

In attendance: Paul Bannister, Insolvency Service
 Andrew Short, Insolvency Service
 Rebecca Oliver, Norton Rose Fulbright LLP (secretary)

- 1 Opening of meeting.
- 2 The minutes of the meeting held on 20th May 2021 were approved.



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- 3 Current consultations/proposals

Terms of reference	Working party	Comments/Update
A. Insolvency Service Call for Evidence seeking views on the Insolvency (England and Wales) Rules 2016 https://www.gov.uk/government/news/call-for-evidence-on-the-insolvency-rules		Closing date 30 June 2021

<p>B. HMRC consultation paper: Clamping down on promoters of tax avoidance</p> <p>https://www.gov.uk/government/consultations/clamping-down-on-promoters-of-tax-avoidance</p>		<p>Closing date 1 June 2021</p>
<p>C. HM Treasury's consultation on proposed amendments to the insolvency arrangements for insurers that apply under the Financial Services and Markets Act 2000</p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987949/Amendments_to_the_Insolvency_Arrangements_for_Insurers.pdf</p>		<p>Closing date 13 August 2021</p> <p>CLLS response: https://www.citysolicitors.org.uk/storage/2021/08/CLLS-response-to-insurers-consultation-12-08-21.pdf</p>
<p>D. DWP consultation on Strengthening The Pensions Regulator's Powers: Notifiable Events (Amendments) Regulations 2021</p> <p>https://www.gov.uk/government/consultations/strengthening-the-pensions-regulators-powers-notifiable-events-amendments-regulations-2021</p>	<p>The Committee noted that under the proposed regulations, additional or extended security would become a notifiable event.</p> <p>The Committee will speak to pensions colleagues with a view to preparing a response.</p>	<p>Closing date 27 October 2021</p>

4 Discussion with Paul Bannister and Andrew Shore, Insolvency Service

A useful discussion was held on the following topics:

COVID temporary legislative measures coming to an end and tapering of restrictions on winding-up companies across the next six months. The tapering measures removes the Covid test with the exception of the commercial landlord sector where it remains. This is to facilitate the introduction of the proposed new rent arbitration policy.

COVID permanent measures – the good use of restructuring plans introduced by CIGA including one that had not been sanctioned which demonstrated that the protection measures for creditors can work; and the potential for further use of moratoriums for SMEs as the Government's temporary support measures came to an end.

[Rating \(Coronavirus\) and Directors Disqualification \(Dissolved Companies\) Bill](#) addressing the loophole of not being able to investigate directors of dissolved companies which bypass an insolvency process but nonetheless may carry on trading through another company. This has completed its passage through the House of Commons and starts on its journey through the Lord's. Paul expects Royal Assent to be around the end of November.

Paul reported that the Pre-pack pool had completed about 27 opinions since the introduction of the new regulations.

Expected stakeholder consultation regarding adoption of UNCITRAL Model Laws on Recognition and Enforcement of Insolvency-Related Judgments and on Enterprise Group Insolvency probably in the New Year. UNCITRAL consideration of new model law or legislative guidance on applicable laws.

All-Party Parliamentary Group on Fair Business Banking, supported by law firm Humphries Kerstetter LLP, launched their report on the regulation of insolvency practitioners. They had a number of criticisms, largely related to their finding of conflicts of interest. Paul noted that these were largely based on a number of large historic cases.

Annual policy conference – an opportunity for academics to advance issues and papers – 19th November hosted by Aston University which can be attended in person or virtually. Insolvency Service will issue an agenda shortly including the policy papers that will be taken at the conference.

5 The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) Regulations 2021 in force from 29th September 2021

<https://www.gov.uk/government/news/end-of-temporary-insolvency-measures>

[The Corporate Insolvency and Governance Act 2020 \(Coronavirus\) \(Amendment of Schedule 10\) Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2020/29/section-10/regulations/2021/10)

Noted by the Committee.

6 Supporting businesses with commercial rent debts: policy statement, in response to the call for evidence on commercial rents

<https://www.gov.uk/government/publications/resolving-commercial-rent-arrears-accumulated-due-to-covid-19/supporting-businesses-with-commercial-rent-debts-policy-statement>

Noted by the Committee.

7 Payment and Electronic Money Institution Insolvency Regulations 2021 (SI 2021/716) made on 17 June 2021 and in force from 8 July 2021

<https://www.legislation.gov.uk/uksi/2021/716/made/data.pdf>

https://www.legislation.gov.uk/uksi/2021/716/pdfs/uksiem_20210716_en.pdf

Noted by the Committee.

8 Pension Schemes Act 2021: widening of moral hazard powers in force 1 October 2021

[The Pension Schemes Act 2021 \(Commencement No. 3 and Transitional and Saving Provisions\) Regulations 2021](https://www.legislation.gov.uk/ukpga/2021/12/section-3/regulations/2021/10)

Noted by the Committee.

9 Some recent cases noted by the Committee:

Re DTEK Energy BV and Re DTEK Finance Plc [2021] EWHC 1456 (Ch)

BUJ Architects LLP v Investin Quay House Ltd [2021] EWHC 2371 (Ch)

Re A Company (also known as A v B) [2021] EWHC 2289 (Ch)

Kireeva and another v Bedzhamov [2021] EWHC 2281 (Ch)

Re Provident SPV Limited [2021] EWHC 2217 (Ch)

Ipagoo LLP (Electronic Money Regulations 2011 and Insolvency Act 1986) [2021] EWHC 2163 (Ch)

Re All Scheme Limited [2021] EWHC 1401 (Ch)

Re Hurricane Energy plc [2021] EWHC 1759 (Ch)

10 Any other business

11 Next meeting

Thursday 18th November 2021, due to be hosted by Ian Johnson at Slaughter & May, at a time to be confirmed.