

Monthly E-Briefing (Issue 33 – March/April 2012)

Current matters

Training Committee vacancies

The Training Committee has three vacancies to fill as a result of the resignation of three existing members and is therefore seeking applications from prospective new members. Please see <http://www.citysolicitors.org.uk/Default.aspx?SID=968&IID=0> for details. Applications close **27 June 2012**.

Submissions/documents

Company Law Committee responds to various European Commission, ESMA and FSA consultations

The Law Society of England & Wales and the CLLS **Company Law Committee** recently commented on the European Commission's proposals for a Regulation on insider dealing and market manipulation (market abuse), and for a Directive on criminal sanctions for insider dealing and market manipulation (see http://ec.europa.eu/internal_market/securities/abuse/index_en.htm for the proposal and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1159&IID=0> for the response.) The proposal "aims to update and strengthen the existing framework to ensure market integrity and investor protection provided by the Market Abuse Directive" (2003/6/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:096:0016:0016:EN:PDF>). The Committee commented under the following headings: Guidance for understanding key provisions; Maximum harmonisation regime; Article 6: Inside information; Article 7: Insider dealing and improper disclosure of inside information; Article 14: Managers' Transactions; The Directive.

The Company Law Committee of the Law Society of England and Wales and the CLLS **Company Law Committee** also recently jointly responded to the European Commission's proposal to amend the Transparency Directive (see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0683:FIN:EN:PDF> for the proposal and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1145&IID=0> for the response.) The response commented in detail on the issues of "Article 3(1): Integration of securities markets", "Article 4: Annual Financial Reports", "Article 9 and 13: Information about major holdings" and "Guidance".

Furthermore, the **Company Law Committee** also recently responded to the ESMA consultation paper "ESMA's draft technical advice on possible Delegated Acts concerning the regulation on short selling and certain aspects of credit default swaps" (see

<http://www.esma.europa.eu/system/files/2012-98.pdf> for the consultation paper and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1139&IID=0> for the response.) The purpose of the consultation was “to seek comments on the technical advice that ESMA proposes to give to the European Commission on a number of possible delegated acts concerning the Regulation as listed in the Commission request for advice”. The response focussed on equity reporting rather than sovereign debt, and responded to some of the specific questions in the consultation paper.

In addition, the Committee also recently responded to the FSA Consultation Paper “UK implementation of Amending Directive 2010/73/EU - Simplifying the EU Prospectus and Transparency Directives”. (See http://www.fsa.gov.uk/library/policy/cp/2011/11_28.shtml and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1146&IID=0> for the response.) The paper consulted on the UK implementation of changes to the Prospectus Directive and the Transparency Directive. The Committee’s submission responded in detail to questions 17-19 of the consultation paper.

Competition Committee comments on proposed reforms to the UK competition regime

The **Competition Law Committee** recently responded to the Government’s announcement of its proposed reforms to the UK competition regime (see <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/g/12-512-growth-and-competition-regime-government-response.pdf> for the Government’s document “Growth, Competition And The Competition Regime: Government Response To Consultation” and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1148&IID=0> for the Committee’s comments.) The Government’s paper noted that “The Government has decided to create a new CMA and transfer the functions of the CC and the competition functions of the OFT to it”. The Committee’s response noted that “The CLLS generally supports the Government’s Competition reforms but does have serious concerns about a number of elements.”

Financial Law Committee responds to DG Internal Market’s bail-in proposals

The **Financial Law Committee** recently commented on DG Internal Market’s working document on bail-in as a debt write down tool. (See http://ec.europa.eu/internal_market/bank/docs/crisis-management/discussion_paper_bail_in_en.pdf for the working document and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1169&IID=0> for the Committee’s comments.) As the consultation paper stated, “If introduced, the debt write-down tool would give resolution authorities the power to write down the claims of unsecured creditors of a failing institution and to convert debt claims to equity.” The submission commented in detail in response to some of the questions contained in the document.

Insurance Law Committee considers Law Commission proposals on Insurance Contract Law, and HMT consultation relating to use of gender as a risk factor by insurers

The **Insurance Law Committee** recently responded to the joint Law Commission/Scottish Law Commission consultation paper entitled “Insurance Contract Law: Post Contract Duties and Other Issues”. (See http://lawcommission.justice.gov.uk/docs/cp201_summary.pdf for a summary of the consultation paper and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1156&IID=0> for the response.) The consultation paper covered possible changes to insurance contract law under four topics: damages for late payment, insurers’ remedies for fraudulent claims, insurable interest; and policies and premiums in marine insurance. The submission responded to the specific questions contained in the consultation document.

The Committee also responded to the HMT consultation “UK response to the 1 March European Court of Justice ruling that insurance benefits and premiums after 21 December 2012 should be gender-neutral”) (See http://www.hm-treasury.gov.uk/d/condoc_insurance_benefits_and_premiums.pdf for the consultation paper and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1147&IID=0> for the response.) The consultation document set out the UK Government’s proposed response to the ECJ judgment on Directive 2004/113/EC in Case 236/09 ‘Test Achats’ of 1 March 2011. As the paper stated, “In its judgment, the ECJ ruled that the use of gender as a risk factor by insurers should not result in individual differences in premiums and benefits for men and women, and that the derogation permitted by Article 5(2) of the Directive should cease to have effect from 21 December 2012.” The Committee responded to the questions in the consultation document.

Intellectual Property Law Committee considers IPO copyright changes

The **Intellectual Property Law Committee** recently responded to the Intellectual Property Office’s “Consultation on proposals to change the UK’s copyright system” (Reference: 2011-004). (See <http://www.ipo.gov.uk/consult-2011-copyright> for the consultation paper and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1151&IID=0> for the response.) The consultation sought “views on the Government’s proposals for implementing a number of the recommendations, relating to copyright, that it accepted in its response to the Hargreaves Review”. The Committee responded in detail to some of the questions in the consultation document.

PR&RC comments on HM Government’s consultation “Introducing a Statutory Register of Lobbyists”

The **Professional Rules & Regulation Committee (“PR&RC”)** recently responded to HM Government’s Consultation Paper “Introducing a Statutory Register of Lobbyists” (Cm 8233) (see <http://www.official-documents.gov.uk/document/cm82/8233/8233.pdf> for the consultation paper and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1168&IID=0> for the response.) As the consultation paper stated “The purpose of this consultation is to give all interested parties the opportunity to comment on the policy options that will underpin the establishment of a statutory register of lobbyists.” The response commented under the following headings: “Specificity of the Legal Profession”, “Definitions”, “Scope”, “Information to be included in the Register”, “Frequency of returns”, “Funding”, “Sanctions” and “The Register’s Operator”.

Regulatory Law Committee comments on large exposure regime, AIFMD and MiFID consultations, and on “cleansing announcements”.

The **Regulatory Law Committee** recently responded to the FSA’s consultation paper “Large Exposures Regime - groups of connected clients and connected counterparties” (CP 12/1). (See <http://www.fsa.gov.uk/library/policy/cp/2012/12-01.shtml> for the consultation paper and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1172&IID=0> for the response.) The consultation proposed certain changes to the large exposure rules which apply in the UK. The response “welcome[d] those elements of the proposals which will conform the UK rules to those in the CRD and CEBS guidelines, [but] raise[d] some serious concerns..”.

Furthermore, the Committee also recently responded to certain of the questions in the FSA’s Discussion Paper 12/1 (“Implementation of the Alternative Investment Fund Managers Directive”) (see <http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/discussion/dp12-01.pdf> for the

consultation paper and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1153&IID=0> for the response.) The Discussion paper set out some of the FSA's provisional thinking in its approach to implementing the Alternative Investment Fund Managers Directive (AIFMD) in the UK. The Committee's paper responded in detail to the questions contained in the DP.

The Committee also recently wrote to the FSA regarding "cleansing announcements". (See <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1166&IID=0> for the CLLS's letter to the FSA on this issue and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1167&IID=0> for the FSA's response.)

In addition, the Committee also recently responded to ESMA's discussion paper "Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM" (ESMA/2012/117)

(see <http://www.esma.europa.eu/system/files/2012-117.pdf> for the consultation paper and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1155&IID=0> for the response.) In its discussion paper, ESMA sought "the views of external stakeholders on the policy orientations it [had] identified in order to progress its work to achieve a harmonised application of the Alternative Investment Fund Managers Directive". The Committee responded in detail to the relevant questions contained in the Discussion Paper.

Furthermore, the Committee also responded to ESMA's consultation paper on "Guidelines on certain aspects of the MiFID compliance function requirements" (ESMA/2011/446) (see http://www.esma.europa.eu/system/files/2011_446.pdf for the consultation paper and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1141&IID=0> for the response.) The ESMA paper set out for consultation draft ESMA guidelines on certain aspects of the MiFID compliance function requirements. The submission made a number of specific comments in response to the consultation document.

Revenue Law Committee comments on Retrospective Legislation - Debt Buybacks

The **Revenue Law Committee** recently wrote to The Exchequer Secretary to the Treasury (Mr David Gauke) regarding "Retrospective Legislation - Debt Buybacks" (see http://www.hm-treasury.gov.uk/d/wms_loan_relationships_270212.pdf for the relevant Ministerial Statement and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1142&IID=0> for the CLLS letter.) The Ministerial Statement included reference proposed retrospective legislative amendments in relation to debt acquisitions on or after 1 December 2011. In its response the Committee expressed its "deep concern at the retrospective element of the changes" including, *inter alia*, the "irreparable damage that may be done to the UK's standing as a place to do business."

Comments on LETR Discussion Paper 1/2012

The Chief Executive recently produced a commentary which selectively compared the emerging issues in the LETR Discussion Paper 1/2012 with the CLLS Position Paper submitted to the LETR team in February 2012. (See <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1162&IID=0> for the paper.) The paper compared the CLLS position (as set out in its February 2012 position paper) with that taken in the LETR Discussion Paper 1/2012, on the issues of "Knowledge and Skills Gaps", "Entry to the profession - the numbers game", "Selection systems", "The Legal Practice Course", and "Rival international qualifications".

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