

THE CITY OF LONDON LAW SOCIETY

INSOLVENCY LAW COMMITTEE

(the **Committee**)

Minutes of a meeting of the Committee held at Skadden Arps Slate Meagher & Flom (UK) LLP,
40 Bank Street, Canary Wharf, London E14 5DS on Thursday 15 January 2009 at 12.45 pm

Present: Hamish Anderson, Norton Rose LLP (Chairman)
Ian Hodgson, Slaughter & May
Mark Hyde, Clifford Chance LLP
Chris Mallon, Skadden Arps Slate Meagher & Flom (UK) LLP
Jennifer Marshall, Allen & Overy LLP
Mark Andrews, Denton Wilde Sapte LLP
Mike Woollard, SJ Berwin LLP
Emma Riddle for Stephen Foster, Lovells LLP

Apologies: James Roome, Bingham McCutchen LLP
Ken Baird, Freshfields Bruckhaus Deringer LLP
Patrick Corr, Sidley Austin LLP
Rita Lowe, CMS Cameron McKenna LLP
Stephen Gale, Herbert Smith LLP
Tony Bugg, Linklaters LLP

In attendance: Rebecca Oliver, Norton Rose LLP

1 Opening of meeting

The Chairman opened the meeting.

2 Minutes of the meeting held on 20 November 2008

The draft minutes of the meeting held on 20 November 2008 were approved.

3 Banking Bill/financial stability and depositor protection

The Chairman reported that the working party of the Committee dealing with the Banking Bill had submitted a response in relation to Part 2 (Bank Insolvency) and Part 3 (Bank Administration) of the Banking Bill.

The Chairman reported that Jennifer Marshall and Hamish Anderson had been appointed to committees formed by the Treasury's Expert Liaison Group to assist with consultations on (i) the rules to be introduced under secondary legislation in relation to the Banking Bill (Hamish Anderson), and (ii) a prospective new insolvency procedure to deal with investment funds (Jennifer Marshall). In light of this it was considered inappropriate for Hamish Anderson and Jennifer Marshall to continue to be part of the working party formed to consider the Banking Bill. Mike Woollard, Mark Andrews and Chris Mallon volunteered to join the working party group in their place, together with Stephen Gale (chair) and Ian Hodgson.

The Chairman reported on the FSA consultation paper - Financial Services Compensation Scheme reform: Fast payout for depositors and raising consumer awareness. This consultation paper outlines how the FSA, alongside the Financial Services Compensation Scheme, intends

to increase public confidence in the UK's statutory compensation fund for financial defaults and to ensure that compensation payments can be made in seven days. It was agreed that since the paper dealt with issues of set-off (given the intention to pay out compensation to eligible depositors on a gross basis rather than the previous net basis), it would be appropriate for the Committee to comment. It was agreed that the Banking Bill working party would consider the consultation paper and produce a draft response for the Committee to consider at their next meeting in March.

4 DEFRA Consultation on the Rules of Court for the water and sewerage special administration regime

The Chairman reported that the consultation paper of December 2008 sought views on the draft Water Industry (Special Administration) Rules 2009.

It was agreed that Stephen Foster, Rita Lowe and Ben Larkin would be requested to consider the consultation paper and draft a response for the Committee to consider at their next meeting.

5 Summary of responses to the Insolvency Service consultation on changes to the Insolvency Act 1986 and the Company Directors Disqualification Act 1986 to be made by a Legislative Reform Order for the modernisation and streamlining of insolvency procedures (November 2008)

The Chairman reported that only minor amendments had been made following the consultation process.

6 Proposals in respect of advertising in voluntary liquidations - draft order and explanatory note laid in Parliament 4 December 2008

The Legislative Reform (Insolvency) (Advertising Requirements) Order 2009" (SI 2009/#####)

Explanatory Document

The proposals were noted.

7 Summary of responses to HM Treasury's consultation on amendments to part 7 of the Companies Act 1989

The Chairman noted that the Financial Law Committee were responding on behalf of CLLS.

8 Matters under observation

The following matters remain under observation:

- (a) European Commission White Paper on financial stability (expected in 2009)
- (b) Financial Markets Law Committee: Administration set-off and expenses
- (c) European High Yield Association proposals
- (d) The European Commission's consultation on the reorganisation and winding up of credit institutions
- (e) UNCITRAL's work on the treatment of enterprise groups in insolvency

- (f) Evaluation of the EC Insolvency Regulation (Insolvency Service consultation paper expected in 2009; European Commission consultation paper expected in 2010)
- (g) Financial Markets Law Committee: proposal for a mandatory insolvency set-off rule for building societies and incorporated friendly societies

9 Committee vacancies

The Chairman reported that the following people had agreed to join the Committee:

Mike Woollard, SJ Berwin LLP

Patrick Corr, Sidley Austin LLP

Ben Larkin, Berwin Leighton Paisner LLP

Rita Lowe, CMS Cameron McKenna LLP.

The Chairman confirmed that this left further vacancies should any other persons wish to join the group.

10 Any other business

It was agreed that the Chairman would write to Stephen Leinster at the Insolvency Service to (i) the ongoing project to consolidate secondary insolvency legislation; and (ii) to find out whether consideration was being given to a review of the area of insolvency of limited partnerships formed under the Limited Partnerships Act 1907 given their renewed use in various financing structures.

11 Next meeting

It was agreed that the next meeting would be at 8 am on Tuesday 17 March 2009 hosted by Ken Baird, Freshfields Bruckhaus Deringer LLP at 65 Fleet Street, London EC4Y 1HT.

12 Close of meeting

There being no further business, the meeting closed.