

THE CITY OF LONDON LAW SOCIETY

INSOLVENCY LAW COMMITTEE

(the **Committee**)

Minutes of a meeting of the Committee held at Bingham McCutchen LLP, 41 Lothbury, London EC2R 7HF on Tuesday 19 May 2009 at 8 am

Present: Stephen Gale, Herbert Smith LLP (Chairman)
James Roome, Bingham McCutchen LLP
Rita Lowe, CMS Cameron McKenna LLP
Emma Riddel, Lovells LLP
Mark Andrews, Denton Wilde Sapte LLP
Patrick Corr, Sidley Austin LLP (by phone)

Apologies: Hamish Anderson, Norton Rose LLP
Chris Mallon, Skadden Arps Slate Meagher & Flom (UK) LLP
Mike Woollard, SJ Berwin LLP
Stephen Foster, Lovells LLP
Ben Larkin, Berwin Leighton Paisner LLP
Jennifer Marshall, Allen & Overy LLP

In attendance: Rebecca Oliver, Norton Rose LLP

1 Opening of meeting

The Chairman opened the meeting.

2 Minutes of the meeting held on Tuesday 17 March 2009

The draft minutes of the meeting held on 17 March 2009 were approved.

3 Banking Act/financial stability and depositor protection

Financial Markets Law Committee letter of 28 April 2009 to the Treasury's Banking Reform Team.

The contents of this letter were noted, in particular the possibility that an insurance company would fall within the terms of the Banking Act. The Treasury's response to be a matter under observation.

4 Insolvency Service consultation on changes to corporate insolvency law

The Meeting noted the Insolvency Services bulletin of 22 April 2009 regarding the consultation exercise expected in June relating to extension of the moratorium on creditor action in company voluntary arrangements to viable large and medium sized companies. The following Committee members agreed to form a working party for this consultation process:

Ken Baird (Chairperson)
Mike Woollard
Rita Lowe
Stephen Gale
Patrick Corr

5 HM Treasury consultation on developing effective resolution arrangements for investment banks

The Chairman noted the HM Treasury consultation paper of May 2009 inviting comments by 10 July 2009. Emma Riddel noted that Stephen Foster would be willing to represent the Committee in a Joint Working Party with the Financial Law Committee to respond to the consultation. It was suggested that Tony Bugg be contacted as a useful source of information and experience relating to Lehmans.

6 The Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009 No. 312

Noted by the Committee.

7 The Legislative Reform (Insolvency) (Advertising Requirements) Order 2009 No. 864

Noted by the Committee.

8 The Financial Markets and Insolvency Regulations 2009 No. 853

Noted by the Committee.

9 The Building Societies (Insolvency and Special Administration) Order 2009 No. 805

Noted by the Committee.

10 *Jefferies International Limited v Landsbanki Islands HF* [2009] EWHC 894

Noted by the Committee.

11 Matters under observation

- (a) European Commission White Paper on financial stability (expected in 2009)
- (b) Financial Markets Law Committee: Administration set-off and expenses
- (c) The European Commission's consultation on the reorganisation and winding up of credit institutions
- (d) UNCITRAL's work on the treatment of enterprise groups in insolvency
- (e) Evaluation of the EC Insolvency Regulation (Insolvency Service consultation paper expected in 2009; European Commission consultation paper expected in 2010)
- (f) Financial Markets Law Committee: proposal for a mandatory insolvency set-off rule for building societies and incorporated friendly societies
- (g) Consolidation of secondary insolvency legislation
- (h) Insolvency process for Limited Partnerships
- (i) *Oakland v Wellswood (Yorkshire) Ltd* UKEAT/0395/08
- (j) Protected Cell Companies
- (k) Any response from the Treasury to the Financial Markets Law Committee letter of 28 April 2009.

12 Any other business

James Roome noted ECJ's decision in *Cartesio Oktato es Szolgdato Bt* (C-210/06). Held: a national law restricting a company from moving its real seat to another EU Member State (where the company wished to retain its status as a company governed by the law of the Member State of incorporation) was not a restriction on the right of establishment and was therefore not contrary to EU law.

13 Next meeting

It was agreed that the next meeting would be at 8 am on Tuesday 15 September 2009 to be hosted by Mark Hyde, Clifford Chance LLP. Location and time to be confirmed.

14 Close of business

There being no further business the Meeting closed.