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For the attention of Nick Howard, Director of Policy

By email: policy.unit@insolvency.gsi.gov.uk

30 June 2011

Dear Sir

Insolvency Law Committee response to Insolvency Service proposals for technical amendments to the Insolvency Act 1986 and other related insolvency legislation

The City of London Law Society (“CLLS”) represents approximately 14,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response in respect of the Insolvency Service’s proposals for technical amendments to the Insolvency Act 1986 and other related insolvency legislation, has been prepared by the CLLS Insolvency Law Committee whose current members are shown in Schedule 1 to this letter.

Please find the Committee's comments on the proposals for technical amendments set out in Schedule 2, shown for your ease of reference in the right hand column to the form of Table A as circulated in your letter to stakeholders of 3 June 2011.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Hamish Anderson', followed by a long horizontal line extending to the right.

Hamish Anderson
Chair
CLLS Insolvency Committee

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Schedule 1

THE CITY OF LONDON LAW SOCIETY INSOLVENCY LAW COMMITTEE

Individuals and firms represented on this Committee are as follows:

Hamish Anderson (Norton Rose LLP) (Chairman)
K. Baird (Freshfields Bruckhaus Deringer) (Deputy Chairman)
N. Barnett (Denton Wilde Sapte LLP)
T. Bugg (Linklaters LLP)
A. Cohen (Clifford Chance LLP)
P. Corr (Sidley Austin LLP)
S. Foster (Hogan Lovells LLP)
S. Frith (Stephenson Harwood LLP)
S. Gale (Herbert Smith LLP)
I. Hodgson (Slaughter and May)
B. Larkin (Berwin Leighton Paisner LLP)
Ms R. Lowe (CMS Cameron McKenna LLP)
C. Mallon (Skadden Arps Slate Meagher & Flom (UK) LLP)
Ms J. Marshall (Allen & Overy LLP)
B. Nurse (Eversheds LLP)
J.H.D. Roome (Bingham McCutchen LLP)
M. Woollard (S.J. Berwin LLP).

Schedule 2

Table A - Insolvency Service proposed technical amendments showing the comments of the CLLS Insolvency Law Committee

Provision to be amended	Reason for amendment	Comments of CLLS Insolvency Law Committee
Insolvency Act 1986		
Where applicable	Removal of references to 'statutory declarations' and replace with 'statements of truth' to bring into line with modern drafting.	Agreed
Where applicable	Replace references to Inland Revenue with Her Majesty's Revenue and Customs.	Agreed
All statement of company's affairs	To remove the requirement to release personal details of individual (non-corporate) creditors, including the name, address and amounts owed. Creditors will be able to request this information, but the office holder/director can refuse subject to a court order. This change is designed to alleviate data protection concerns.	Agreed
Section 7	Setting out the conditions for when a company voluntary arrangement can be said to be in default for the purposes of a petition. This would be an equivalent to s.276, which sets out the conditions under which an individual voluntary arrangement can be taken to be in default for the purposes of the court granting a petition on bankruptcy. The gap has been filled by Arthur Rathbone (Kitchens) Ltd case, but we consider it is worth making the legislative change.	Agreed
Section 192	To be revoked, as no longer necessary to require the liquidator to update the register of companies of a liquidation lasting more than one year. From April 2010 an annual progress report has to be produced, a copy of	Agreed

	which is sent to the registrar, which obviates the need for this section.	
Section 213	Extension of fraudulent trading to cover administration and administrative receiverships, where the company does not exit as a going concern. Seen as logical that this section should extend to proceedings beyond liquidation, in which the company does not continue as a going concern.	This is a potentially significant extension of risk for directors which may impact on the willingness of directors to use administration for rescue and restructuring purposes and which should be the subject of full consultation in the usual way.
Section 214	Extension of wrongful trading to cover administration and administrative receiverships, where the company does not exit as a going concern. Seen as logical that this section should extend to proceedings beyond liquidation, in which the company does not continue as a going concern.	This is a potentially significant extension of risk for directors which may impact on the willingness of directors to use administration for rescue and restructuring purposes and which should be the subject of full consultation in the usual way.
Section 216	Extend the restriction on the use of a company name to that of the website name, in the instance where the website name is so dissimilar to the company name that it would not already be captured by the section 216 restriction. This is to tighten up the ability of a failed company to be a 'phoenix' company.	Agreed
New clause around Section 238	Enable the court to compel HMRC officials to produce documents relating to the insolvency. This clause on the corporate side, would mirror section 369 'Order for production of documents by HMRC' in bankruptcy.	Agreed
Section 283 (3A)	Add additional types of tenancy arrangement to the list of arrangements excluded from a bankrupt's estate, to reflect developments in the tenancy market.	Agreed
Section 304 (2)	Add replacement trustee, to the list of those able to apply to the court for liability of the original trustee. This is to correct an	Agreed

	omission.	
Section 403 (1) and (2)	To assist the Bank of England's objective to withdraw from offering retail banking facilities to government departments, to remove the reference to holding the Insolvency Services Account (1) and the Insolvency Services Investment Account (2) with the Bank of England as set out in section 403.	Agreed
Section 426 (A-C) and Schedule 4ZB	Add a provision to enable the disqualification from the UK Parliament of a person subject to an equivalent debt relief restriction order (DRRO) and debt relief restriction undertaking (DRRU) issued in Scotland or Northern Ireland. There already exists a provision enabling the disqualification from the UK Parliament of a person subject to an equivalent Bankruptcy restriction order (BRO) or Bankruptcy restriction undertaking (BRU) issued in Scotland or Northern Ireland which can be enabled through secondary legislation. There is a need for an equivalent enabling power for DRROs and DRRUs.	Agreed
Paragraph 54 (1) (a)	Addition to allow a revision of the administrator's proposals to be made where the original proposals have been deemed approved under paragraph 52 (1) and there has been no initial creditors' meeting. Change would be to add, 'or deemed approved' to the end of paragraph 54 (1) (a).	Agreed
Paragraph 78 (2) (b) and 108 (3) (b)	Consent to also be required from preferential creditors who have already received a distribution to match up with paragraph 98 (3) (b). This is to correct an unintentional omission disenfranchising preferential creditors who have received a distribution, in contrast to those preferential creditors who the	Agreed

	administrator thinks may receive a distribution, whose consent is sought in all instances.	
Paragraph 78, 98 and 108	Change to the consent required from secured creditors so that it is only required from those secured creditors who respond to an invitation to give consent. This is to prevent creditors who fail to respond from holding up proceedings.	Agreed
Paragraph 83	Movement from administration to creditors' voluntary liquidation to occur on filing at court, rather than on the registration at Companies House. This is to provide certainty as to the timing of the change.	Agreed
Company Directors Disqualification Act 1986		
Section 15 (1) (b) (ii)	Correction of an omission. In addition to a person becoming liable for the relevant debts if acting on the instructions of someone they know to be an undischarged bankrupt, in future they will also be liable if acting on the instructions of someone they know to be subject to a:- a). Bankruptcy restriction order (BRO) b). Bankruptcy restriction undertaking (BRU) c). Debt relief order (DRO) d). Debt relief restriction order (DRRO) e). Debt relief restriction undertaken (DRRU)	Agreed
Third Party (Rights Against Insurers) Act 2010	The Act allows a person with an insurance claim against an insolvent person /company to claim against the insolvent person /company's insurer, without which the proceeds of the insurance would be paid to the general creditors. The Act is supposed to cover all insolvency procedures, however out of court entry into	Agreed

	administration was omitted by mistake. The correction would simply replicate the universal coverage of the existing 1930 Acts and enable the legislation to come into force.	
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