

THE CITY OF LONDON LAW SOCIETY
INSOLVENCY LAW COMMITTEE
(the **Committee**)

Minutes of a meeting of the Committee held at Akin Gump Strauss Hauer & Feld LLP,
41 Lothbury, London EC2R 7HF on Tuesday 17th November 2015 at 12.30pm

Present: Hamish Anderson, Norton Rose Fulbright LLP (Chair)
Jennifer Marshall, Allen & Overy LLP
James Roome, Akin Gump Strauss Hauer & Feld LLP
Dominic McCahill, Skadden Arps Slate Meagher & Flom (UK) LLP
Lindsay Hingston, Freshfields Bruckhaus Deringer LLP
Gabrielle Ruiz, Clifford Chance LLP
Mike Woollard, King & Wood Mallesons SJ Berwin LLP
Lucy Chambers, Slaughter and May
Jo Windsor, Linklaters LLP
Giles Boothman, Ashurst LLP
Ben Klinger, Sidley Austin LLP
Ben Larkin, Jones Day
Inga West, Ashurst LLP

Apologies: Ian Johnson, Slaughter and May
Catherine Balmond, Freshfields Bruckhaus Deringer LLP
Byron Nurse, Dentons UKMEA LLP
Peter Wiltshire, CMS Cameron McKenna LLP
Adrian Cohen, Clifford Chance LLP
Tony Bugg, Linklaters LLP
Laurence Elliott, Herbert Smith Freehills LLP
Stuart Frith, Stephenson Harwood LLP
Joe Bannister, Hogan Lovells International LLP

Present: Anne Willcocks CBE, Insolvency Service
Dean Beale, Insolvency Service
Rebecca Oliver, Norton Rose Fulbright LLP (Secretary)

1 Opening of meeting

The Chair opened the meeting and welcomed Anne Willcocks and Dean Beale from the Insolvency Service.

2 Minutes of the meeting held on 16th September 2015

The draft minutes of the meeting held on 16th September 2015 were approved.

3 General discussion with Anne Willcocks and Dean Beale

Anne Willcocks and Dean Beale set out the projects that had been undertaken since our last meeting with them, and their current priorities.

(i) Modernisation of the Insolvency Rules – this is in its last stages, and it is hoped that the final form will be ready in time for the introduction of the Adjudicator in bankruptcy proceedings in April. If not, that part will need to be accelerated. For the remainder if the new Rules are not published by the summer, their commencement date will also be pushed back but the present intention remains commencement in October 2016. Attempts to codify existing case-law on administration expenses in the new rules have proved extremely difficult and stakeholders have latterly advised that it would be preferable to re-state the existing provisions leaving the courts more flexibility as to their application. In this

connection, it was suggested that it would be helpful if future statutory charges could specify whether or not they were intended to give rise to an administration expense.

(ii) The Red Tape challenge has largely been achieved through the legislation of this year and the modernised Insolvency Rules will complete the process.

(iii) Thought is being given as to how further to improve the UK as a favourable jurisdiction for business by reconsidering the adequacy of existing insolvency proceedings. There was general discussion as to how rescues are achievable by a combination of existing techniques for cram-downs but recognising that we may need to make this more streamlined and, perhaps, also reconsider moratoriums in CVAs.

(ii) Pre-pack administrations – This issue continues to receive Parliamentary attention. A period of time must be given following the introduction of the new pre-pack pool and revised SIP 16 before consideration will be given as to whether the conduct of pre-packaged administrations requires further legislation in the area of sales to connected parties. The Insolvency Service will be keeping in touch with how the pre-pack pool is working.

(iii) Consultation with employees on group redundancies by insolvent companies – the results of the consultation will shortly be published. [*Published on Friday 20th November 2015, see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/478683/summary_of_responses_-_combined_17-11-15.pdf*]

(iv) UNCITRAL insolvency working group - Dean Beale gave some background to the working group and its work to date that has led to the circulation of papers on the co-ordination of group insolvencies and the recognition of insolvency related judgments that the group will be considering at its meeting in December. The IS invited comment from the committee on these working papers. Hamish Anderson, Jennifer Marshall, Jo Windsor and Dominic McCahill volunteered to meet Dean Beale separately to discuss the draft papers prior to the December working party meeting.

The Committee also asked about the following areas:

(i) Financial Collateral Directive – Dean Beale offered to link Jo Windsor to the Treasury policy group considering this.

(ii) Anne Willcocks confirmed that the intention behind the introduction of the right to transfer rights to bring claims against directors in the SBEEA was to ensure lack of funds in an insolvent group did not prevent claims being pursued rather than to encourage the pursuit of less meritorious cases.

4 Current consultations

The Chair noted the following on-going consultations:

Terms of reference	Discussion	Deadline
A. Revised Insolvency Rules	See as noted in (3) above.	
B. Administration expenses stakeholder meeting	Jennifer Marshall's summary by email of 5 October 2015 was noted.	1 October 2015
C. Law Commission consultation on Bills of Sale	Mike Woollard	9 December 2015
D. UNCITRAL insolvency working group: 48th session, 14-18	See as noted in (3) above, working party to meet with Dean Beale:	Meeting date to be confirmed.

December 2015, Vienna	Hamish Anderson Jennifer Marshall Jo Windsor Dominic McCahill	
E. HM Treasury Banking Liaison Panel meetings	Ongoing support from Dorothy Livingstone, CLLS Financial Law Committee and Jennifer Marshall	
F. European Commission call for evidence: EU regulatory framework for financial services (part of Capital Markets Action Plan)	Support to CLLS Regulatory Law Committee if needed.	6 January 2016

5 Summary of insolvency legislation amends effective from 1 October 2015:

- i. Repeal of requirement to give notice to "prescribed persons" in out-of-court appointments of administrators by company or directors where no qualifying floating charge holder (paragraph 6, Schedule 6, Deregulation Act 2015 (DA 2015), amending paragraph 26 of Schedule B1 to the Insolvency Act 1986 (IA 1986)).
- ii. Release of administrator where no distribution to unsecured creditors (paragraph 7, Schedule 6, DA 2015, amending paragraph 98 of Schedule B1 to the IA 1986).
- iii. Removal of power of court to order payment into Bank of England of money due to company (paragraph 9, Schedule 6, DA 2015, repealing section 151 of the IA 1986).
- iv. Release of liquidator where winding-up order rescinded (paragraph 10, Schedule 6, DA 2015, amending section 174(4) of the IA 1986).
- v. After-acquired property and bank accounts for undischarged bankrupts (paragraph 16, Schedule 6, DA 2015, amending section 307 of the IA 1986).
- vi. New regime allowing IPs to be authorised solely to act in relation to corporate insolvency or personal insolvency (section 17, DA 2015, amending Part 13 of the IA 1986).
- vii. Authorisation of IPs by recognised professional bodies (paragraphs 17-23, Schedule 6, DA 2015, amending Part 13 of the IA 1986).
- viii. Repeal of Deeds of Arrangement Act 1914 (paragraphs 1-3, Schedule 6, DA 2015).
- ix. Bankruptcy level increased to £5000 (Insolvency Act 1986 (Amendment) Order 2015 (SI 2015/922)).
- x. New thresholds for debt relief orders (Insolvency Proceedings (Monetary Limits) (Amendment) Order 2015 (SI 2015/26)).
- xi. New power for administrator to bring claim for fraudulent or wrongful trading (section 117, Small Business, Enterprise and Employment Act 2015 (SBEEA 2015), inserting sections 246ZA, 246ZB and 246ZC of the Insolvency Act 1986 (IA 1986)).
- xii. New power for liquidator or administrator to assign causes of action (section 118, SBEEA 2015, inserting section 246ZD of the IA 1986).

- xiii. Proceeds of office-holder claims not to be available for floating charge holders (section 119, SBEEA 2015, inserting section 176ZB of the IA 1986).
- xiv. IPs' record-keeping requirements simplified (Insolvency Practitioners (Amendment) Regulations 2015 (SI 2015/391)).
- xv. Approved fee estimates required (Insolvency (Amendment) Rules 2015 (SI 2015/443)).
- xvi. New regime allowing IPs to be authorised solely to act in relation to corporate insolvency or personal insolvency (section 17, Deregulation Act 2015 (DA 2015), amending Part 13, IA 1986).
- xvii. Repeal of provisions allowing individuals to be authorised to act solely as nominees or supervisors in voluntary arrangements (paragraphs 17-23, Schedule 6, DA 2015, amending Part 13 of the IA 1986).
- xviii. New rules on recognition of IPs' regulatory bodies and sanction of IPs (sections 137-143, SBEEA 2015, amending Part 13 of the IA 1986).
- xix. Power to establish a single regulator of IPs (sections 144-146, SBEEA 2015).
- xx. Application for making of director's disqualification order: power to require information (paragraph 11, Schedule 6, DA 2015, amending section 7(4), Company Directors Disqualification Act 1986).
- xxi. New provisions on directors' disqualification (including new ground for disqualification; factors for court to consider; compensation for creditors) (Part 9 of the SBEEA 2015, amending the Company Directors Disqualification Act 1986).
- xxii. Protection of essential supplies (sections 92-95, Enterprise and Regulatory Reform Act 2013; the Insolvency (Protection of Essential Supplies) Order 2015 (SI 2015/989)).

Noted by the Committee.

6 Revised Statement of Insolvency Practice 1 (An introduction to statements of insolvency practice) effective from 1 October 2015

Noted by the Committee.

7 Revised Statement of Insolvency Practice 16 (Pre-packaged sales in administrations) effective from 1 November 2015

Noted by the Committee.

8 Revised Statement of Insolvency Practice 9 (Payments to insolvency office holders and their associates) effective from 1 December 2015

Noted by the Committee.

9 Collective Redundancy Consultation for Employers facing Insolvency – results of consultation

Noted by Anne Willcocks that this will be published shortly.

10 The Insolvency (Protection of Essential Supplies) Order 2015 - Guidance for insolvency practitioners and suppliers published October 2015

Noted by the Committee.

11 Insolvency Statistics: July to September 2015

Noted by the Committee.

12 Some recent cases

In Re Sahaviriya Steel Industries UK Ltd, Official Receiver v Sahaviriya Steel Industries Public Company Ltd [2015] EWHC 2877 (Ch)

Official Receiver v Norriss [2015] EWHC 2697

Capital For Enterprise Fund A LP and another v Bibby Financial Services Limited [2015] EWHC 2593 (Ch)

Nike European Operations Netherlands BV v Sportland Oy Case C-310/14, [2015] All ER (D) 151 (Oct)

Noted by the Committee.

13 Any other business

None.

14 Next meeting

Wednesday 20th January 2016, to be hosted by Adrian Cohen, Clifford Chance LLP, at a time to be confirmed.

15 Close of business

There being no further business the meeting closed.