

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

Minutes of a meeting of the Committee held at Jones Day, 21 Tudor St,  
 London EC4Y 0DJ on Thursday 18<sup>th</sup> January 2018 at 12.30pm

**Present:** Catherine Balmond, Freshfields Bruckhaus Deringer LLP (Chair)  
 Kay Morley, Jones Day  
 Alex Lofthouse, Jones Day  
 Hamish Anderson, Norton Rose Fulbright LLP  
 Gabrielle Ruiz, Clifford Chance LLP  
 Inga West, Ashurst LLP  
 Dominic McCahill, Skadden Arps Slate Meagher & Flom (UK) LLP  
 Stuart Frith, Stephenson Harwood LLP  
 Sarah Lawson, Dentons UKMEA LLP  
 Helen Coverdale, CMS Cameron McKenna LLP  
 Jo Windsor, Linklaters LLP  
 Ross Miller, Simmons & Simmons LLP  
 Ian Johnson, Slaughter and May  
 Stuart Frith, Stephenson Harwood LLP

**Apologies:** Jennifer Marshall, Allen & Overy LLP  
 Ben Larkin, Jones Day  
 Joe Bannister, Hogan Lovells International LLP  
 James Roome, Akin Gump Strauss Hauer & Feld LLP  
 Ben Klinger, Sidley Austin LLP  
 Peter Wilshire, CMS Cameron McKenna LLP  
 Laurence Elliott, Herbert Smith Freehills LLP  
 Giles Boothman, Ashurst LLP

**Present:** Katharina Crinson, Freshfields Bruckhaus Deringer LLP  
 Rebecca Oliver, Norton Rose Fulbright LLP (secretary)

**1 Opening of meeting**

**2 Minutes of the meeting held on 16<sup>th</sup> November 2017**

The draft minutes of the meeting held on 16<sup>th</sup> November 2017 were approved.

**3 Consultations**

The Chair noted the following on-going consultations:

Terms of reference	Working party	Comments/Update
A. HM Treasury Banking Liaison Panel meetings	Dorothy Livingstone, CLLS Financial Law Committee Jennifer Marshall	
B. Insolvency Service review of the corporate insolvency framework: consultation on options for reform <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525523/A_Review_of_the_Corporate_Insolvency_Framework.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525523/A_Review_of_the_Corporate_Insolvency_Framework.pdf</a>	Jo Windsor Joe Bannister Ian Johnson Jennifer Marshall Katharina Crinson Inga West Catherine Balmond Giles Boothman	Summary of responses: <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555939/Summary_of_responses_-_final.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555939/Summary_of_responses_-_final.pdf</a>
C. Proposed EU Directive on preventive		

Terms of reference	Working party	Comments/Update
restructuring frameworks Proposed directive: <a href="http://ec.europa.eu/information_society/newsroom/image/document/2016-48/proposal_40046.pdf">http://ec.europa.eu/information_society/newsroom/image/document/2016-48/proposal_40046.pdf</a>  Legislative observatory link: <a href="http://www.europarl.europa.eu/oeil-mobile/fiche-procedure/2016/0359(COD)">http://www.europarl.europa.eu/oeil-mobile/fiche-procedure/2016/0359(COD)</a>		
D. HM Treasury call for evidence on problem debt <a href="https://www.gov.uk/government/consultations/breathing-space-call-for-evidence">https://www.gov.uk/government/consultations/breathing-space-call-for-evidence</a>	No response submitted.	Closing date 16 January 2018
E. HM Government has issued a consultation on the practice of cash retention under construction contracts <a href="https://www.gov.uk/government/consultations/retention-payments-in-the-construction-industry">https://www.gov.uk/government/consultations/retention-payments-in-the-construction-industry</a>	No response submitted.	Closing date 19 January 2018
F. Department for Education consultation on insolvency regime for further education and sixth-form colleges <a href="https://www.gov.uk/government/consultations/insolvency-regime-for-further-education-and-sixth-form-colleges">https://www.gov.uk/government/consultations/insolvency-regime-for-further-education-and-sixth-form-colleges</a>	No response to be submitted.	Closing date 12 February 2018

#### 4 Brexit – implications for restructuring and insolvency

The Committee's Brexit working group is drafting a letter to whomever will replace Margo James as the relevant BEIS minister.

#### 5 The draft Business Contract Terms (Assignment of Receivables) Regulations 2018

It was noted that the 2017 version of the Regulations was withdrawn and that BEIS were in the process of redrafting the Regulations in light of various comments submitted by the CLLS and other stakeholders, with a view to laying a revised draft before Parliament in early February. It was noted that if firms planned to make individual submissions to BEIS on the content of the revised Regulations, it would need to be as soon as possible. Jennifer Marshall has been part of the CLLS Financial Law committee working party considering the Regulations and has been feeding in comments from Committee members, notably Jo Windsor, and would continue to feed in to any further comments made to BEIS during the redrafting process.

#### 6 Revised Statement of Insolvency Practice 6 on deemed consent and decision procedures in force from 1 January 2018

Noted by the Committee.

#### 7 Revised Statement of Insolvency Practice 11 on the handling of funds in formal insolvency appointments in force from 1 January 2018

Noted by the Committee.

**8 Insolvency (Miscellaneous Amendments) Regulations 2017 in force from 8 December 2017**

Noted by the Committee.

**9 Insolvency (England and Wales) and Insolvency (Scotland) (Miscellaneous and Consequential Amendments) Rules 2017 in force from 8 December 2017**

Noted by the Committee.

**10 The Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 (SI 2017/1205) in force from 26 December 2017**

Noted by the Committee.

**11 CE filing update**

Inga West noted there are inconsistencies between CE filing and the Insolvency Rules:

(i) the Insolvency Rules do not generally envisage out of hours appointments except in the case of the exemption for Qualifying Charge Holders who are expressly permitted to do so; and

(ii) the CE file procedures do not cross refer to the new Insolvency Rules.

Inga West mentioned that the Insolvency Lawyers' Association had written to the courts and the Insolvency Service to raise the issue and will now follow up with the Insolvency Service who have not yet responded. Helen Coverdale noted there may be inconsistencies with searching the CE file compared to searches in person or by telephone.

**12 Some recent cases**

*Tünkers France and Tünkers Maschinenbau GmbH v Expert France [2017] EUECJ C-641/16*

*In Re Nortel Networks UK Limited & Ors [2017] EWHC 3299 (Ch)*

*Glasgow (Bankruptcy Trustee of Harlequin Property Svc Ltd) v ELS Law Ltd and others [2017] EWHC 3004 (Ch)*

*Premier Motorauctions Ltd (in liquidation) and another v Pricewaterhousecoopers LLP [2017] EWCA Civ 1872*

*Monarch Airlines Ltd v Airport Coordination Ltd [2017] EWCA Civ 1892*

*In Re Agrokor [2017] EWHC 2791 (Ch)*

*Revenue and Customs Commissioners v Lomas and others [2017] EWCA Civ 2124*

*Cherkasov v Olegovich [2017] EWHC 3153 (Ch)*

*Grant and Others v WDW 3 Investments Ltd and another [2017] EWHC 2807 (Ch)*

*Peter Valach and others v Waldviertler Sparkasse Bank AG and others (Case C-649/16) 20 December 2017*

*Bakhshiyeva (in her capacity as the foreign representative of the OJSC International Bank of Azerbaijan) v Sberbank of Russia and others [2018] EWHC 59 (Ch)*

*Niki Luftfahrt GmbH 84T 211B 36n IN 6433/17 Amtsgericht Charlottenburg (8 January 2018, Charlottenburg District Court)*

**13 Committee membership**

The secretary would request the CLLS to make the periodic advertisement for new members of the Committee again.

**14 Any other business**

(i) Inga West noted the EU proposals for an “accelerated loan security” for secured creditors to enforce security without awaiting judicial enforcement proceedings set out in the European Commission consultation document on the development of secondary markets for non-performing loans and distressed assets and protection of secured creditors from borrowers’ default open from July to October 2017:

[https://ec.europa.eu/info/sites/info/files/2017-non-performing-loans-consultation-document\\_en.pdf](https://ec.europa.eu/info/sites/info/files/2017-non-performing-loans-consultation-document_en.pdf)

(ii) The Committee noted that UNCITRAL’s working Group V (Insolvency Law) had its 52nd session in Vienna in December 2017 to progress the model law on Recognition and enforcement of insolvency-related judgments.

**15 Next meeting**

Thursday 22nd March 2018, to be hosted by Catherine Balmond, Freshfields Bruckhaus Deringer LLP at 12.30pm.

**16 Close of business**

There being no further business the meeting closed.