


THE CITY OF LONDON LAW SOCIETY INSOLVENCY LAW COMMITTEE
MINUTES OF MEETING HELD AT HERBERT SMITH FREEHILLS LLP,
EXCHANGE HOUSE, PRIMROSE STREET, LONDON EC2A 2EG
ON THURSDAY 21st NOVEMBER 2019 AT 12.30pm





Present: Jennifer Marshall, Allen & Overy LLP (chair)
Catherine Balmond, Freshfields Bruckhaus Deringer LLP
Kevin Pullen, Herbert Smith Freehills LLP
Jo Windsor, Linklaters LLP
Ben Larkin, Jones Day
Gabrielle Ruiz, Clifford Chance LLP
Joe Bannister, Hogan Lovells International LLP
Inga West, Ashurst LLP
Dominic McCahill, Skadden Arps Slate Meagher & Flom (UK) LLP
Ian Fox, Dentons UK and Middle East LLP
Lauren Pflueger, Akin Gump Strauss Hauer & Feld
Kevin Hart, CLLS
Peter Wiltshire, CMS Cameron McKenna LLP

Apologies: Hamish Anderson, Norton Rose Fulbright LLP
Giles Boothman, Ashurst LLP
Ben Klinger, Brown Rudnick LLP
Adrian Cohen, Clifford Chance LLP
Ian Johnson, Slaughter and May
David Ereira, Paul Hastings (Europe) LLP
Stuart Frith, Stephenson Harwood LLP
James Roome, Akin Gump Strauss Hauer & Feld
Ross Miller, Simmons & Simmons LLP

In attendance: Rebecca Oliver, Norton Rose Fulbright LLP (secretary)

- 1 Opening of meeting. Jennifer Marshall welcomed new member Ian Fox.
- 2 Minutes of the meeting held on 19th September 2019 approved.
- 3 Current consultations/proposals

Terms of reference	Working party	Comments/Update
<p>A. BEIS response on insolvency and corporate governance consultations of 2016 and 2018 published 26 August 2018:</p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736163/ICG - Government response doc - 24 Aug clean version with Minister's photo and signature AC.pdf</p>	<p>Jennifer Marshall Catherine Balmond Katharina Crinson Jo Windsor Ian Johnson Inga West Dominic McCahill Hamish Anderson</p>	<p>Meeting with Insolvency Service held 4 December 2018.</p> <p>Joint CLLS and ILA paper commenting on reform proposals submitted to the Insolvency Service 27 February 2019.</p> <p> BK-#47806318-v5-Joint_ILA__CLLS_respor</p>
<p>B. HMRC consultation "Protecting your taxes in insolvency"</p>	<p>Hamish Anderson Jennifer Marshall Catherine Balmond</p>	<p>Response submitted on 9 May 2019:</p>

<p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781323/Protecting_your_taxes_in_insolvency.pdf</p>	<p>Stuart Frith Joe Bannister Inga West Katharina Crinson</p>	<p>http://www.citysolicitors.org.uk/attachments/article/119/CLLS%20%20response%20to%20HMRC%20consultation%20-%20April%202019.pdf</p> <p>Stakeholder letters of 2nd and 3rd September 2019 to the Chancellor of the Exchequer requesting reconsideration and reversal of the policy.</p> <p> R3-Joint stakeholder letter to the Chancello</p> <p> Letter to Rt Hon Sajid Javid MP re preferenti</p> <p>Jennifer Marshall and Hamish Anderson for CLLS, Inga West for ILA, attended stakeholder meeting with representatives from HMRC, the Treasury and the Insolvency Service on 30th October 2019 to discuss the issues raised in the responses further.</p>
<p>C. <u>Law Commission call for evidence on intermediated securities</u></p>		<p>Closing date 5 November 2019.</p> <p>David Ereira assisted the CLLS Regulatory Law Committee with responses to the insolvency related questions.</p> <p> CLLS Response Intermediated Securit</p>
<p>D. Insolvency Service informal stakeholder consultation on appointment of administrators and electronic filing</p> <p> Stakeholder doc (final).docx</p>		<p>General discussion of the problems in practice. Inga West and Gabrielle Ruiz discussed these issues via the ILA, suggesting removing the restrictions on out of hours e-filing for notices of appointment and the Committee considered no separate response was necessary.</p>

4 Brexit – implications for restructuring and insolvency

It was noted that at the last meeting Paul Bannister, head of policy at the Insolvency Service, updated the Committee on the progress of the proposed corporate insolvency reforms and the timing of any potential implementation through primary legislation in the context of the Government's legislative preparations for the UK's exit from the EU and a forthcoming election. Following discussion of the Committee's concerns about the real short term effects on viable businesses from a "no deal" Brexit and whether there may be a quick fix that could be enacted if the situation warranted it, the Committee had given thought to proposals for a few concise legislative clauses to aid short-term liquidity issues which may result immediately following the UK's exit from the EU. Those recommendations were not put forwards however as a preliminary draft being circulated between Committee members for discussion had been shared with the Brexit Law Committee who had indicated that it had concerns regarding such proposals.

The Committee noted the CLLS and similar stakeholder bodies' roles in assisting with consultations and putting forward suggestions for change, but that it was important to keep such matters between members of the Committee until they were finalised and published.

5 Ofgem letter to insolvency practitioners appointed to failed Energy Supply companies 5 November 2019

https://www.ofgem.gov.uk/system/files/docs/2019/11/open_letter_to_insolvency_practitioners_appointed_to_failed_energy_supply_companies.pdf

Noted by the Committee.

6 Insolvency Statistics Q3 2019

<https://www.thegazette.co.uk/insolvency/content/103422>

Noted by the Committee.

7 The following recent cases were noted by the Committee:

Re Nortel Networks France SAS [2019] EWHC 2447 Chancery Division.

Discovery (Northampton) Ltd & Ors v Debenhams Retail Ltd & Ors [2019] EWHC 2441

Sell Your Car with us Ltd v Sareen [2019] EWHC 2332

Re Thomas Cook Group plc & Ors [2019] EWHC 2626

Re JPF Clarke (Construction) Ltd [2019] Lexis Citation 379

Meadowside Building Developments Ltd v 12-18 Hill Street Management Co Ltd [2019] EWHC 2651

Secretary of State for Business, Energy & Industrial Strategy v Eagling [2019] EWHC 2806 (Ch)

Re Instant Cash Loans Limited [2019] EWHC 2795 (Ch)

Addlesee and others v Dentons Europe LLP [2019] EWCA Civ 1600

Wallace v Wallace [2019] EWHC 2503 (Ch)

8 Any other business

- i. Pensions Schemes Bill – Kevin Pullen noted the first reading in the House of Lords of this Bill which would open directors of businesses involved in restructurings to liability for any agreement with creditors which might result in a compromised of the s.75 pension scheme debt in the form of potential criminal liability for avoidance of employer debt. The Committee noted that this would be likely to result in more formal administration processes in order for administrators to rely on the exemption of liability for insolvency practitioners which was not, as drafted, available to directors of insolvent companies.

The Committee noted that following the dissolution of Parliament, the Bill would not progress to second reading but the Committee would keep watch for any future forms of this Bill in the context of the previous February 2019 consultation on strengthening the Pension Regulator's position: <https://www.gov.uk/government/consultations/protecting-defined-benefit-pension-schemes-a-stronger-pensions-regulator>.

- ii. Kevin Hart noted the annual dinner for members of the CLLS Specialist Committees is being held at Cutlers Hall, on Tuesday 4th February 2020.

9 Next meeting

Thursday 16th January 2020, to be hosted by Jo Windsor at Linklaters LLP at 8.30am.