

**THE CITY OF LONDON LAW SOCIETY INSOLVENCY LAW COMMITTEE**  
**MINUTES OF THE MEETING HELD AT ASHURST LLP,**  
**LONDON FRUIT & WOOL EXCHANGE, 1 DUVAL SQUARE, LONDON E1 6PW**  
**ON THURSDAY 12<sup>th</sup> MARCH 2020 AT 8.30am**


**Present:** Jennifer Marshall, Allen & Overy LLP (chair)  
 Giles Boothman, Ashurst LLP  
 Inga West, Ashurst LLP  
 Catherine Balmond, Freshfields Bruckhaus Deringer LLP  
 Jo Windsor, Linklaters LLP  
 Hamish Anderson, Norton Rose Fulbright LLP  
 Kevin Pullen, Herbert Smith Freehills LLP  
 Gabrielle Ruiz, Clifford Chance LLP  
 Joe Bannister, Hogan Lovells International LLP  
 Dominic McCahill, Skadden Arps Slate Meagher & Flom (UK) LLP  
 Ian Fox, Dentons UK and Middle East LLP  
 Kay Morley, Akin Gump Strauss Hauer & Feld  
 Ian Johnson, Slaughter and May  
 Megan Sparber, Slaughter and May  
 Peter Wiltshire, CMS Cameron McKenna LLP  
 David Ereira, Paul Hastings (Europe) LLP

**Apologies:** James Roome, Akin Gump Strauss Hauer & Feld  
 Ben Larkin, Jones Day  
 Adrian Cohen, Clifford Chance LLP  
 Ben Klinger, Brown Rudnick LLP  
 Stuart Frith, Stephenson Harwood LLP  
 Ross Miller, Simmons & Simmons LLP

**In attendance:** Kevin Hart, CLLS  
 Paul Bannister, Head of Policy, Insolvency Service  
 Rebecca Oliver, Norton Rose Fulbright LLP (secretary)

- 1 Opening of meeting and welcome to Paul Bannister, Head of Policy at the Insolvency Service.
- 2 The minutes of the meeting held on 16<sup>th</sup> January 2020 were approved.
- 3 Current consultations/proposals

Terms of reference	Working party	Comments/Update
A. BEIS response on insolvency and corporate governance consultations of 2016 and 2018 published 26 August 2018:  <a href="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">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 phot            o and signature AC.pdf</a>	Jennifer Marshall Catherine Balmond Katharina Crinson Jo Windsor Ian Johnson Inga West Dominic McCahill Hamish Anderson	Meeting with Insolvency Service held 4 December 2018.  Joint CLLS and ILA paper commenting on reform proposals submitted to the Insolvency Service 27 February 2019.

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#### 4 **Brexit and Covid-19 – implications for restructuring and insolvency**

There was a discussion about the inevitable major impact of Covid-19 on UK businesses facing issues with workforces, supply chains and overall drop in trade likely to cause immediate and ongoing cash-flow concerns. Particularly affected will be SMEs in the retail and hospitality sectors, and the travel industry including airlines. It was noted that it would be helpful if the proposed corporate insolvency reforms could be prioritised to support struggling businesses, and in addition if consideration could be given to alleviate short-term liquidity issues of UK businesses caused by the Covid-19 downturn and relieve directors considering restructurings from potential wrongful trading liabilities in the short-term, and also reconsider the implications for directors in restructurings proposed in the Pensions Bill.

Paul Bannister also gave an update on the proposed, indicative timetable for insolvency related legislation for 2020 although this was prior to the main impact of Covid-19 and so is likely to be adjusted accordingly. He said that the main focus will be on corporate governance and related matters and there could be a Bill relating to such matters in the second session of 2021. The legislation to introduce a special administration regime for airlines is being advanced with the hopes that this might be introduced into parliament in the Summer/Autumn of 2020. Based on the original timetable, the corporate insolvency law reforms are unlikely to be advanced until 2021 (although this might now change as a result of Covid-19). There may be a chance to deal with out of court administration appointments through a rule change by July 2020. An order relating to pre-packs was ready to be laid prior to the May 2020 deadline.

#### 5 **Budget 2020**

It was noted that the reintroduction of crown preference would be delayed until December 2020. The Committee hoped that this might be reconsidered, especially in light of Covid-19 and consequential pressures on cash-flows of UK businesses.

#### 6 **Insolvency Act 1986 (Prescribed Part) (Amendment) Order 2020 in force from 6 April 2020**

[http://www.legislation.gov.uk/ukxi/2020/211/pdfs/ukxi\\_20200211\\_en.pdf](http://www.legislation.gov.uk/ukxi/2020/211/pdfs/ukxi_20200211_en.pdf)

[Explanatory note](#)

Noted by the Committee.

#### 7 **Updated ICAEW Insolvency Code of Ethics effective from 1 May 2020**

<https://www.icaew.com/-/media/corporate/files/technical/ethics/insolvency-code-of-ethics.ashx?la=en>

Noted by the Committee.

#### 8 **Joint statement from the Financial Conduct Authority (FCA), the Information Commissioner’s Office (ICO) and the Financial Services Compensation Scheme (FSCS), warning insolvency practitioners and FCA-authorized firms to be responsible when dealing with personal data**

<https://www.fca.org.uk/news/statements/fca-ico-and-fscs-publish-joint-statement-insolvency-practitioners-and-authorized-firms>

Noted by the Committee.

**9 Chancellor of the High Court: guidance note on appointing an administrator**

<https://www.judiciary.uk/wp-content/uploads/2020/01/Administration-Notices-For-release-FINAL.docx>

Noted by the Committee.

**10 Insolvency Statistics, October to December 2019**

<https://www.gov.uk/government/statistics/company-insolvency-statistics-october-to-december-2019>

Noted by the Committee.

**11 The following recent cases were noted by the Committee:**

*Lehman Brothers Australia Ltd (in liquidation) (scheme administrators appointed) v Macnamara and others [2020] EWCA Civ 321*

*Re Bailey and another (Sturgeon Central Asia Balanced Fund Ltd) [2020] EWHC 123 (Ch)*

*Mendonca v KPMG Corporate Finance Sao Paulo, Brazil [2020] EWHC 351 (Ch)*

*Re Carter Moore Solicitors [2020] EWHC 186 (Ch)*

*Re Statebourne (Cryogenic) Ltd [2020] EWHC 231 (Ch)*

*Re Symm & Company Limited [2020] EWHC 317 (Ch)*

*Re Systems Building Services Group Ltd [2020] EWHC 54 (Ch)*

*Morley (t/a Morley Estates) v Royal Bank of Scotland Plc [2020] EWHC 88 (Ch)*

**12 Any other business**

Kevin Hart reported on meeting of Chairs of CLLS specialist Committees held on 15th January.

**13 Next meeting**

Thursday 21st May 2020, to be hosted by Ian Johnson at Slaughter and May, at 8.30am.