

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

Minutes of a meeting of the Committee held at Brown Rudnick LLP, 8 Clifford Street,
 London W1S 2LQ on Thursday 16 November 2017 at 12.30pm

Present: Jennifer Marshall, Allen & Overy LLP (Chair)
 Catherine Balmond, Freshfields Bruckhaus Deringer LLP
 Hamish Anderson, Norton Rose Fulbright LLP
 Joe Bannister, Hogan Lovells International LLP
 Gabrielle Ruiz, Clifford Chance LLP
 Inga West, Ashurst LLP
 Dominic McCahill, Skadden Arps Slate Meagher & Flom (UK) LLP
 Ben Larkin, Jones Day
 Ben Klinger, Sidley Austin LLP
 Byron Nurse, Dentons UKMEA LLP
 Giles Boothman, Ashurst LLP
 Jo Windsor, Linklaters LLP
 Charlotte Drake, Stephenson Harwood LLP
 Adrian Cohen, Clifford Chance LLP

Apologies: James Roome, Akin Gump Strauss Hauer & Feld LLP
 Ross Miller, Simmons & Simmons LLP
 Rebecca Oliver, Norton Rose Fulbright LLP
 Peter Wilshire, CMS Cameron McKenna LLP
 Laurence Elliott, Herbert Smith Freehills LLP
 Stuart Frith, Stephenson Harwood LLP
 Ian Johnson, Slaughter and May

Present: Andrew Shore, Insolvency Service
 Sam Roberts, Insolvency Service
 Kevin Hart, CLLS
 Lucy Aconley, Allen & Overy LLP

1 Opening of meeting

2 Minutes of the meeting held on 21 September 2017

The draft minutes of the meeting held on 21 September 2017 were approved.

3 Current 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 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525523/A_Review_of_the_Corporate_Insolvency_Framework.pdf	Jo Windsor Joe Bannister Ian Johnson Jennifer Marshall Katharina Crinson Inga West Catherine Balmond Giles Boothman	Summary of responses: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555939/Summary_of_responses_-_final.pdf

Terms of reference	Working party	Comments/Update
<p>C. Proposed EU Directive on preventive restructuring frameworks</p> <p>Proposed directive: http://ec.europa.eu/information_society/newsroom/image/document/2016-48/proposal_40046.pdf</p> <p>Legislative observatory link: http://www.europarl.europa.eu/oeil-mobile/fiche-procedure/2016/0359(COD)</p>		
<p>D. HM Treasury call for evidence on problem debt</p> <p>https://www.gov.uk/government/consultations/breathing-space-call-for-evidence</p>		Closing date 16 January 2018
<p>E. HM Government has issued a consultation on the practice of cash retention under construction contracts</p> <p>https://www.gov.uk/government/consultations/retention-payments-in-the-construction-industry</p>		Closing date 19 January 2018

4 The draft Business Contract Terms (Assignment of Receivables) Regulations 2017

It was noted that these draft regulations have been withdrawn.

5 Chancery Guide 2016 updated October 2017

<https://www.judiciary.gov.uk/publications/chancery-guide-2016-updated/>

Noted by the Committee.

6 Insolvency Statistics: July to September 2017

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655164/Insolvency_Statistics_-_Q3_2017_web.pdf

Noted by the Committee.

7 Brexit – implications for restructuring and insolvency: discussion with Andrew Shore and Sam Roberts from the Insolvency Service

An interesting discussion was had on, among other things, the Withdrawal Bill, the pros and cons of incorporating all or part of the EU Insolvency Regulation into domestic law, transitional arrangements for on-going insolvency proceedings, the role of the ECJ, the interaction of the EU Insolvency Regulation and the Cross Border Insolvency Regulations (and the expansion of the CBIRs); the status of the proposed EU “harmonisation” Directive and possible next steps.

It was agreed that the Committee would write a letter to Margo James, the relevant BEIS minister, outlining the Committee’s views as a result of the discussion today.

8 Some recent cases

The following cases were noted by the Committee:

Burlington Loan Management Ltd v Lomas [2017] EWCA Civ 1462 (Lehman Waterfall IIA: statutory interest in administration (Court of Appeal))

In the Matter of Agrokor DD, In the Matter of the Cross-Border Insolvency Regulations 2006 [2017] EWHC 2791 (Ch)

9 Any other business

Inga West reported on a potential issue with the new Practice Direction on Insolvency Proceedings (publication of which is still awaited) and when winding up petitions appeared on the court file (and could therefore be discovered via a search of the court file). The issue centred on the fact that the winding up petition would not be visible on the court file until the relevant fee and OR deposit has been paid (and, under the new Practice Direction, a petitioner has 7 days in which to pay the fee), but once paid, the petition would be stamped with its original filing date – not the date of payment.

[Since the meeting, HMCTS has confirmed in writing that winding up petitions will be stamped with the date of payment of the relevant fees/deposit not the date of original filing and the new Practice Direction has now been published.]

10 Next meeting

Thursday 18 January 2018, to be hosted by Ben Larkin, Jones Day at a time to be confirmed.

11 Close of business

There being no further business the meeting closed.