

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

Minutes of a meeting of the Committee held at Freshfields Bruckhaus Deringer LLP, 65 Fleet St,
 London EC4Y 1HT on Thursday 22nd March 2018 at 12.30pm

Present: Jennifer Marshall, Allen & Overy LLP (Chair)
 Hamish Anderson, Norton Rose Fulbright LLP
 Catherine Balmond, Freshfields Bruckhaus Deringer LLP
 Ben Larkin, Jones Day
 Gabrielle Ruiz, Clifford Chance LLP
 Ben Klinger, Sidley Austin LLP
 Inga West, Ashurst LLP
 Joe Bannister, Hogan Lovells International LLP
 Dominic McCahill, Skadden Arps Slate Meagher & Flom (UK) LLP
 Jo Windsor, Linklaters LLP
 Ian Johnson, Slaughter and May

Apologies: Ross Miller, Simmons & Simmons LLP
 Adrian Cohen, Clifford Chance LLP
 Stuart Frith, Stephenson Harwood LLP
 James Roome, Akin Gump Strauss Hauer & Feld LLP
 Byron Nurse, Dentons UKMEA LLP
 Peter Wilshire, CMS Cameron McKenna LLP
 Laurence Elliott, Herbert Smith Freehills LLP
 Giles Boothman, Ashurst LLP
 Kevin Hart, CLLS

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 18th January 2018

The draft minutes of the meeting held on 18th January 2018 were approved.

3 Consultations

The Chair noted the following on-going consultations:

Terms of reference	Working party	Comments/Update
A. 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
B. Proposed EU Directive on preventive restructuring frameworks Proposed directive: http://ec.europa.eu/information_society/newsroom/image/document/2016-48/proposal_40046.pdf		

Terms of reference	Working party	Comments/Update
Legislative observatory link: http://www.europarl.europa.eu/oeil-mobile/fiche-procedure/2016/0359(COD)		
C. BEIS and Insolvency Service consultation on insolvency and corporate governance https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691857/Condoc_-_Insolvency_and_Corporate_Governance_FINAL_.pdf	Jo Windsor Jennifer Marshall Hamish Anderson Ian Johnson Dominic McCahill Catherine Balmond Inga West	Closing date 11 June 2018

4 Brexit – implications for restructuring and insolvency

The Committee's Brexit working group sent a letter to Parliamentary Under Secretary of State, Minister for Small Business, Consumers and Corporate Responsibility Andrew Griffiths MP on 14 February 2018 stressing the importance of recognition of English insolvency and restructuring procedures by other EU and EEA states.

The Committee noted that Baroness Hayter had put forward an amendment to the European Union (Withdrawal) Bill in the House of Lords on 21 March 2018 requiring a report outlining the extent to which the benefits afforded by EU insolvency and restructuring law will continue to exist in domestic law after exit day. This was withdrawn following an offer by Lord Keen to arrange a meeting with BEIS to discuss the maintenance of rights in the area of insolvency and restructuring who agreed that negotiations on maintaining civil judicial co-operation should include the insolvency regime.

Various members of the Committee are discussing the importance of retaining reciprocal recognition of insolvency proceedings with colleagues and contacts in other member states.

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

It was noted that following the withdrawal of the 2017 version of the Regulations, BEIS had continued to engage with stakeholders and a revised version of the Regulations was expected to be published shortly limiting the scope of the Regulations to small and medium enterprises, but carving out sole purpose vehicles.

6 Proposal for a Regulation of the European Parliament and of the Council on the law applicable to the third-party effects of assignments of claims

https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-96_en

Noted by the Committee.

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the applicable law to the proprietary effects of transactions in securities COM/2018/089 final

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2018:89:FIN>

Noted by the Committee.

8 European Commission: Reducing Risk in the Banking Union: Commission presents measures to accelerate the reduction of non-performing loans in the banking sector (14th March 2018)

Press release: http://europa.eu/rapid/press-release_IP-18-1802_en.htm

FAQs: http://europa.eu/rapid/press-release_MEMO-18-1803_en.htm

Factsheet: https://ec.europa.eu/info/files/180314-non-performing-loans-factsheet_en

European Commission. Package on Non-Performing Loans (NPLs): Proposal for a Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral

http://ec.europa.eu/finance/docs/policy/180314-proposal-directive-non-performing-loans_en.pdf

European Commission. Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank: Second Progress Report on the Reduction of Non-Performing Loans in Europe

http://ec.europa.eu/finance/docs/policy/180314-communication-non-performing-loans_en.pdf

European Commission. Commission Staff Working Document: AMC Blueprint: Accompanying the document: Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank: Second Progress Report on the Reduction of Non-Performing Loans in Europe

http://ec.europa.eu/finance/docs/policy/180314-staff-working-document-non-performing-loans_en.pdf

Noted by the Committee.

- 9 The Insolvency of Registered Providers of Social Housing Regulations 2018**
http://www.legislation.gov.uk/ukdsi/2018/9780111165423/pdfs/ukdsi_9780111165423_en.pdf

Noted by the Committee.

- 10 Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (SI 2018/208) in force from 13 March 2018**
<http://www.legislation.gov.uk/ukxi/2018/208/contents/made>

http://www.legislation.gov.uk/ukxi/2018/208/pdfs/ukxiem_20180208_en.pdf

Noted by the Committee.

- 11 Insolvency statistics – October to December 2017**
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/675931/Insolvency_Statistics_-_web.pdf

Noted by the Committee.

- 12 The Committee noted the following recent cases:**

Bakhshiyeva v Sberbank of Russia and others [2018] EWHC 59 (Ch)

VE Vegas Investors IV LLC and others v Shinnars and others [2018] EWHC 186 (Ch)

Bevan and another v Walker and others [2018] EWHC 265 (Ch)

Re SHB Realisations Limited [formerly BHS] [2018] EWHC 402 (Ch)

Burnden Holdings (UK) Ltd v Fielding [2018] UKSC 14, SC

Promontoria (Chestnut) Ltd v Craig [2017] EWHC 2405

Re MK Airlines Ltd (in liquidation); Oldham v Katz (acting as joint liquidator of MK Airlines) and another [2018] EWHC 540 (Ch)

13 Any other business

The Committee noted that the new CLLS Data Law Committee for which they will be looking to recruit members. Members of the Committee were requested to contact Kevin Hart if they have colleagues who are interested in joining.

The following CLLS events were noted:

Monday 14th May – CLLS Annual Service at the Tower of London

Monday 18th June – CLLS AGM and reception at Tallows Chandlers' Hall

14 Next meeting

Thursday 17th May 2018, to be hosted by Dominic McCahill, Skadden, Arps, Slate, Meagher & Flom (UK) LLP at 8.30am.

15 Close of business

There being no further business the meeting closed.