**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 Street London EC4Y 1HT on Thursday 15th November 2018 at 8.30am

**Present:** Jennifer Marshall, Allen & Overy LLP (Chair)

Hamish Anderson, Norton Rose Fulbright LLP

Catherine Balmond, Freshfields Bruckhaus Deringer LLP

Katharina Crinson, Freshfields Bruckhaus Deringer LLP

Gabrielle Ruiz, Clifford Chance LLP

Dominic McCahill, Skadden Arps Slate Meagher & Flom (UK) LLP

Joe Bannister, Hogan Lovells International LLP

Jo Windsor, Linklaters LLP

Peter Wiltshire, CMS Cameron McKenna LLP

Ian Johnson, Slaughter and May

Ben Larkin, Jones Day

Lauren Pflueger, Akin Gump Strauss Hauer & Feld LLP

Giles Boothman, Ashurst LLP

Inga West, Ashurst LLP

**Apologies:** Adrian Cohen, Clifford Chance LLP

Ross Miller, Simmons & Simmons LLP

Stuart Frith, Stephenson Harwood LLP

Kevin Pullen, Herbert Smith Freehills LLP

James Roome, Akin Gump Strauss Hauer & Feld LLP

Ben Klinger, Sidley Austin LLP

Byron Nurse, Dentons UKMEA LLP

**Present:** Rebecca Oliver, Norton Rose Fulbright LLP (secretary)

Kevin Hart, CLLS

1. **Opening of meeting**
2. **Minutes of the meeting held on 20th September 2018**

The draft minutes of the meeting held on 20th September 2018 were approved.

1. **Consultations**

The Chair noted the following on-going consultations:

| **Terms of reference** | **Working party** | **Comments/Update** |
| --- | --- | --- |
| 1. BEIS response on insolvency and corporate governance consultations of 2016 and 2018 published 26 August 2018:   <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> | [CLLS response to March 2018 Insolvency and Corporate Governance consultation](http://www.citysolicitors.org.uk/attachments/article/119/Response%20to%20BEIS'%20Insolvency%20and%20Corporate%20Governance%20Consultation%20-%2013%2006%2018.pdf) submitted 13 June 2018 by working party:  Jennifer Marshall  Catherine Balmond  Katharina Crinson  Jo Windsor  Ian Johnson  Inga West  Dominic McCahill  Hamish Anderson  (See also [CLLS Company Law Committee submission](http://www.citysolicitors.org.uk/attachments/category/114/Response%20to%20BEIS%20consultation%20on%20corporate%20governance%20and%20insolvency%20-%2010%20June%202018.pdf)) | Meeting with Insolvency Service planned for 4 December 2018.  The Committee discussed the August proposals and areas they wish to explore further with the Insolvency Service. |
| 1. Proposed EU Directive on preventive restructuring frameworks   Proposed directive: <http://ec.europa.eu/information_society/newsroom/image/document/2016-48/proposal_40046.pdf>  Legislative observatory link: <http://www.europarl.europa.eu/oeil-mobile/fiche-procedure/2016/0359(COD)> |  |  |
| 1. HM Treasury [technical consultation](https://www.gov.uk/government/consultations/draft-banks-and-building-societies-priorities-on-insolvency-order-2018-technical-consultation/technical-consultation-on-the-draft-banks-and-building-societies-priorities-on-insolvency-order-2018) on the [draft Banks and Building Societies (Priorities on Insolvency) Order 2018](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739481/_Draft__The_Banks_and_Building_Societies__Priorities_on_Insolvency__Order_2018.pdf) |  | Closing date 10 October 2018 |
| 1. HM Treasury consults on breathing space for individuals with problem debt   <https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-on-a-policy-proposal/breathing-space-scheme-consultation-on-a-policy-proposal> | The Committee will not submit a response as it relates to individuals rather than corporates. It is expected that R3 will respond. | Closing date 29 January 2019 |

1. **BEIS Brexit – implications for restructuring and insolvency**

It was noted that the proposed Withdrawal Agreement published 14th November 2018 provides for the EU Insolvency Regulation (EU) 2015/848 to continue to apply to insolvency proceedings provided the main proceedings were opened before the end of the transition period, it does not specify whether the Insolvency Regulation will continue to apply where only secondary proceedings have been opened.

1. **Budget announcements**

**(i) From 2020 HMRC secondary preferential creditor for taxes held on behalf of employees and customers**

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752136/Insolvency_web.pdf>

Noted by the Committee. Committee will consider responding jointly with the ILA. A technical consultation is expected later in the year.

**(ii) Tax abuse and insolvency – directors personally liable for taxes where company enters insolvency to evade or avoid tax**

See HMRC summary of responses to consultation on tax abuse and insolvency:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754293/Tax_abuse_and_insolvency_discussion_summary_of_responses.pdf>

Noted by the Committee.

1. **Insolvency Statistics: July to September 2018**

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752501/Commentary_-_Q3_2018.pdf>

Noted by the Committee.

1. **The Committee noted the following recent cases:**

*Re Noble Group Limited [2018] EWHC 2911 (Ch)*

*Re Stronghold Insurance Company Ltd [2018] EWHC 2909 (Ch)*

*In Re The Towcester Racecourse Company Ltd (in administration) [2018] EWHC 2902 (Ch)*

*Lehman Brothers Australia Ltd v Lomas and others [2018] EWHC 2783 (Ch)*

*Sberbank of Russia v The OJSC International Bank of Azerbaijan [2018] EWHC 2777 (Comm)*

*Agrokor ch.15 recognition:* [*http://www.agrokor.hr/en/news/extraordinary-procedure-over-agrokor-fully-recognized-in-the-united-states/*](http://www.agrokor.hr/en/news/extraordinary-procedure-over-agrokor-fully-recognized-in-the-united-states/)

1. **Any other business**

The annual CLLS dinner for the specialist committees is to be held on Monday 21st January 2019 at Cutlers’ Hall, Warwick Lane.

1. **Next meeting**

Thursday 17th January 2019, to be hosted by Ross Miller, Simmons & Simmons LLP at 8.30am.

1. **Close of business**

There being no further business the meeting closed.