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The City of London Law Society Insolvency Law Committee and Financial Law Committee: Response to the UK Jurisdiction Taskforce of the LawtechUK Delivery Panel (UKJT) consultation on "Digital Assets and English Insolvency Law"

1. Introduction

1.1 On 17 October 2023, the UKJT published a public consultation on "Digital Assets and English Insolvency Law" (the "**Consultation**"). The aim of the Consultation is to ensure that a proposed Legal Statement to be delivered by the UKJT provides a valuable tool to insolvency professionals by raising and appropriately addressing the pertinent legal and associated practical issues that may arise in the context of insolvency proceedings which involve digital assets. The Consultation is of interest to both the Insolvency Law Committee and the Financial Law Committee of the City of London Law Society and so a joint working group comprising of members of both Committees has prepared this response.

1.2 The City of London Law Society (the **CLLS**) represents approximately 17,000 City lawyers, through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 20 specialist committees. Links to lists of the individuals represented on the Insolvency Law Committee and the Financial Law Committee are set out at the end of this response.

1.3 We have also included at the end of this response the members of the working group who were involved in drafting it. Any member of the working group would be happy to discuss or expand on any of the comments made in this response. Alternatively, please feel free to contact Jennifer Marshall (Allen & Overy LLP) or Sarah Smith (Baker & McKenzie LLP) whose details are set out below.

2 General observations on the Consultation

2.1 We very much welcome the work that the UKJT is undertaking in this important area. We agree that providing greater certainty on how English insolvency law might impact upon digital assets would assist investors when choosing English law as the governing law of the contractual relationships concerning such digital assets or when selecting England as the

forum for any restructuring or insolvency proceedings. We also consider that, in certain cases, statutory or other reform to our insolvency or closely related laws may be required. This will provide the necessary level of legal certainty to support the safe and efficient operation of systems (and related operations) for the issuance, holding and transfer of digital assets (e.g., in response to the opening of insolvency proceedings in respect of a participant in such systems) and the creation of valid security interests over digital assets. This should further enhance market and wider public confidence in locating digital asset activities in England or Wales and to conduct such activities subject to English law.

2.2 In part 3 of this response, we have sought to identify some material issues of concern to stakeholders in relation to the application of English insolvency law to digital assets (other than those set out in the Annex to the Consultation). In part 4 of this response, we have sought to comment on some of the questions listed in the Annex to the Consultation and propose additional questions which we believe should be raised and answered. We have not sought, at this stage, to provide answers to any of the questions, although we have indicated where we think law reform (either domestic or international) might be required to provide greater certainty. We are also keen to be involved in, or to contribute to, the formulation of the answers to the questions as identified by the Consultation.

2.3 We are aware that there have been a number of recent reports, consultations and other initiatives in respect of digital assets, which are relevant to the subject-matter of the proposed Legal Statement. These include (without limitation):

(a) the Law Commission's Digital Assets Final Report of 28 June 2023 (which was preceded by its Consultation Paper of 28 July 2022) (together, the **Law Commission's Papers**);

(b) H.M. Treasury's consultation and call for evidence on the future financial services regulatory regime for cryptoassets of February 2023 (and response of October 2023), including its related plans on the regulation of fiat-backed stablecoins (October 2023) and the development of the Digital Securities Sandbox (consultation of July 2023 and response of November 2023) (together, the **HMT Initiatives**);

(c) UNIDROIT's Principles on Digital Assets and Private Law published in September 2023 (**UNIDROIT's Principles**) and the related HCCH-UNIDROIT Joint Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens (launched on 12 June 2023) (the **HCCH-UNIDROIT Joint Project**); and

(d) the Law Commission's forthcoming call for evidence in February 2024 on conflict of law issues relevant to digital assets, as mentioned at the UKJT's public hearing on 28 November 2023.

We assume that the UKJT will be taking into account any recommendations or proposals for law reforms made in respect of such consultations and other initiatives when seeking to respond to the questions identified in the Consultation.

3 Material areas of concern not covered by questions in the Annex

Conflict of law issues

3.1 The first area we would like to see addressed by the UKJT is some of the important conflict of laws issues that arise when considering digital assets. Given the global nature of these types of asset (especially when recorded in DLT-based or similar systems across multiple

"nodes" located in multiple jurisdictions) and the relationships governing them, we suspect it will rarely be the case that the English courts have to consider a purely “domestic” arrangement. It could well be that the issuer of the digital assets (if there is one), the exchange through which they are traded, the custody or other arrangements under which they are held and transferred (including arrangements by which security over digital assets is created) and the holders of the assets could all be located or carried on in different jurisdictions.

3.2 We appreciate that the UKJT can only consider the responses to the questions set out in the Consultation as a matter of English law, but this should include English rules of private international law. These rules may help determine the applicable law in respect of many of the questions set out in the Annex to the Consultation. In particular, we consider that it is important that there is clarity regarding the *lex situs* of the digital asset (or at the very least which law should determine the *lex situs*), or any corresponding concept for determining the law governing proprietary questions affecting digital assets (e.g. PRIMA or something analogous), as this could be fundamental in determining various proprietary issues in respect of any security taken over, or any assignment of, such assets. We consider that Principle 5 of UNIDROIT’s Principles is an extremely helpful starting-point in this regard, particularly if it is adopted and developed further on a global basis; specifically, we are hopeful that the outcomes of the HCCH-UNIDROIT Joint Project will allow for the development of an internationally accepted legal framework for the determination of applicable law to govern relevant proprietary issues affecting digital assets. We also note that the Law Commission will be issuing a call for evidence next year on conflict of laws issues relevant to digital assets. We consider it to be critical that English law develops in a manner consistent with such an internationally accepted legal framework and would strongly encourage HM Government's and other UK policy-makers' active engagement, where possible, in these global initiatives as they develop and progress.

3.3 We would therefore suggest the questions set out below in respect of the conflict of laws issues regarding digital assets.

3.3.1 To what extent would the approach of the English courts, when considering proprietary rights attaching to digital assets, vary from the approach adopted in Principle 5 of UNIDROIT’S Principles (or, if available, the recommendations of the HCCH-UNIDROIT Joint Project)?

3.3.2 In particular, how does the UKJT consider the English courts would determine the *lex situs* of (or, if appropriate, the relevant corresponding law for identifying the applicable law to govern proprietary issues affecting) a digital asset?

3.3.3 Furthermore, how would the UKJT expect the English courts to address the following issues:

(a) the legal nature and proprietary effects of any security taken over digital assets or any absolute assignment of such digital assets;

(b) any perfection requirements for such a security interest over, or an absolute assignment of, a digital asset (including the requirements for possession and control if the security interest does constitute a security financial collateral arrangement);

(c) the requirements for creating a security interest over, or assignment of, a digital asset effective against third parties;

(d) the order of priority of competing interests in a digital asset;

(e) the steps required to enforce a security interest over, or assignment of, a digital asset; and

(f) the circumstances in which an insolvency official may challenge a transfer of or the creation of a security interest over a digital asset (e.g. the application of sections 238, 239 and 245 of the Insolvency Act 1986 to digital assets, including addressing relevant factual matters such as, for section 238, the value of the consideration given in the context of certain digital assets which may have very volatile values)?

Security and financial collateral issues

3.4 The question of whether a digital asset is subject to a valid security interest (and if so, what the nature of that security interest may be) is of vital importance in the event of English insolvency proceedings, whether these be in respect of the issuer of the digital asset, a custodian of such assets or the collateral-giver. We note that the UKJT's legal statement on crypto assets and smart contracts of November 2019 touched on the issue of security without going into detail as to what would be required (as a matter of practice) to create and perfect a mortgage or an equitable charge of such assets.

3.5 We would, therefore, suggest the questions set out below in respect of the taking of security over digital assets (when governed by English law).

3.5.1 What factors should be taken into account to determine whether the collateral-giver's right, title or interest in or in relation to the digital asset (the subject of the security) is a right, title or interest in or in relation to a personal claim only (e.g. a contractual right for delivery of equivalent digital assets from a custodian) or is a right, title or interest in or in relation to a proprietary asset (i.e. an identified or identifiable digital asset *in specie* or as a fractional entitlement in or in relation to an ascertained pool of digital assets)?

3.5.2 In any such case, what practical steps would need to be taken by the collateral-taker to attach its security interest over the relevant digital asset (i.e. so as to appropriate the relevant asset to the security interest) under: (a) a legal mortgage, (b) an equitable mortgage, (c) a fixed charge or (d) a floating charge?

3.5.3 In any such case, what practical steps would need to be taken by the collateral-taker to perfect its security interest over the relevant digital asset (i.e. so as to render the security interest effective against third parties under: (a) a legal mortgage, (b) an equitable mortgage, (c) a fixed charge or (d) a floating charge?

3.6 One particular related question that arises is whether digital assets can properly be the subject of a security financial collateral arrangement under the Financial Collateral Arrangements (No. 2) Regulations 2003. We note that the Law Commission expressed some concerns in this regard and suggested some potential law reforms in this area in the Law Commission's Papers; given the benefits of a security financial collateral arrangement to those taking security, we would encourage HM Treasury swiftly to take up the Law Commission's recommendations and consider potential law reforms to support the safe and efficient use of digital assets as collateral. In order to determine whether such reform is necessary, we would suggest the question set out below in respect of financial collateral.

3.6.1 Does the UKJT consider that the protections afforded to financial collateral arrangements under English law against the adverse effect of certain English insolvency laws extend to collateral arrangements over digital assets? If not, why not?

Settlement Finality Regulations

3.7 The Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979) (the **Settlement Finality Regulations**) play a vital role in English insolvency law, and in supporting the safe and stable operation of "designated systems" where required on systemic grounds, by: (a) preventing the revocation of transfer orders given by an insolvent participant that have entered the system and become irrevocable before a time determined in accordance with the system's rules; (b) switching off certain provisions that might otherwise reverse or otherwise invalidate final settlements of money or other relevant assets of the insolvent participant effected through the system; (c) protecting the actions taken by the operator of the system under its default rules or other default arrangements from challenge by a court or insolvency officeholder under applicable insolvency law; and (d) protecting the rights of collateral-takers under "collateral security charges" taken over realisable assets to secure rights and obligations potentially arising in connection with the operation of the system. The questions therefore arise, first, as to whether a crypto exchange or other systemically important system for the issuance, holding and transfer of digital assets could ever be designated as a "designated system" for the purposes of the Settlement Finality Regulations (i.e. are digital assets properly within the scope of the securities and money "settlement assets" the subject of the regulations); and, secondly, if so as to whether certain provisions of the Settlement Finality Regulations (which have been in force for nearly 25 years and were developed with more "traditional" systems in mind) can operate effectively with reference to the specific features of DLT-based or similar technological systems for digital assets. We note that this was not something that was considered in the Law Commission's Papers but has been suggested as a potential area for law reform under the HMT Initiatives.

3.8 We would therefore suggest the question set out below in respect of the Settlement Finality Regulations.

3.8.1 Does the UKJT consider that the settlement finality protections afforded to systemically important systems against the adverse effects of the opening of English insolvency proceedings against participants in such systems extend to systemically important systems for the issuance, holding and transfer of digital assets? If not, why not?

4 Comments on some of the questions listed in the Annex

4.1 In this part of our response, we have commented on some of the questions in the Annex to the Consultation.

Question 2

4.2 We are concerned that question 2 mixes up two important, but distinctive, matters when it comes to the international allocation of insolvency jurisdiction.

4.2.1 The question of “centre of main interests” (or in broad terms where a company administers its interests on a regular basis in a manner that is ascertainable by third parties) is an important concept in determining whether an administration order may

be made in respect of certain companies, where main insolvency proceedings should be commenced under the Recast Insolvency Regulation[1] or what constitutes foreign main proceedings for the purposes of the UNCITRAL Model Law on Cross-Border Insolvency Proceedings (the UNCITRAL Model Law). Following Brexit, the main importance of this concept in the UK is under the UNCITRAL Model Law, both in relation to the recognition of foreign insolvency proceedings in the UK as foreign main proceedings under the Cross-Border Insolvency Regulations and in relation to the recognition of UK insolvency proceedings as foreign main proceedings in other jurisdictions that have adopted the UNCITRAL Model Law, although the concept is still used to determine whether a company not incorporated in an EEA State is a "company" to which Schedule B1 to the Insolvency Act 1986 applies.

4.2.2 There is a presumption that the centre of main interests is the place of the company's registered office, but this can be rebutted by evidence to the contrary. In relation to digital assets, this presumption may have limited application due to the preponderance of so-called "Decentralised Autonomous Organisations" (DAOs) involved in the operation of systems for the issuance, holding and transfer of digital assets under certain business models. Although the location of assets held or otherwise administered (e.g. as a custodian) by an insolvent company might be a (potentially important) factor that would be taken into account in determining the centre of main interests, particularly if that is what is ascertainable to third parties, it is not the determining factor.

4.2.3 Operational or other factors that are objectively ascertainable by creditors may point the "centre of gravity" of COMI factors to a different insolvency jurisdiction to that of the law governing proprietary issues affecting the digital assets held or otherwise administered by an insolvent company. These factors may include the place where the relevant issuer or administrator is regulated or operates its omnibus "hot wallet" central to the provision of its crypto exchange or other custody services for participants. Reference was made in the UKJT's public hearing on 28 November 2023 to the *Zipmex* case in Singapore which emphasised the need for practicality where multiple jurisdictions are involved and came down in favour of the place where the assets were administered (i.e. Singapore). It was noted during that hearing that the analysis of "centre of main interests" may be different depending on who the insolvent entity is: if an exchange, the place of administration seems a more suitable determination of centre of main interests, but that is not necessarily the case if the insolvent is the issuer of a digital asset.

4.2.4 On the other hand, the location of the digital assets (or the *lex situs*) could be relevant in an international insolvency context for various reasons. For example, the effects of secondary proceedings under the Recast Insolvency Regulation and the UNCITRAL Model Law are limited to assets located in that jurisdiction. Furthermore, some of the choice of law rules in the Recast Insolvency Regulation and the UNCITRAL Model Law turn on where the assets are located (for example, main insolvency proceedings do not affect rights *in rem* over assets located outside of the jurisdiction where the main insolvency proceedings are commenced).

4.2.5 We have referred above to the importance of the *lex situs* (or, potentially, analogous concepts such as PRIMA) in determining some of the proprietary aspects of a

[1] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).

security interest over, or an assignment of, the digital assets and we have suggested a new question for the UKJT to consider in relation to *lex situs.* However, the *lex situs* determining the validity, perfection or enforcement of a security interest may be a different legal system and jurisdiction to the jurisdiction that is the COMI for the purpose of determining where "main" insolvency proceedings should take place.

4.3 We would therefore suggest that question 2 is focused on “centre of main interests” and not “lex situs” which we think should be dealt with separately. We would suggest rephrasing question 2 as set out below.

4.3.1 For international allocation of insolvency jurisdiction based upon location of centre of main interests: (a) what factors should be taken into account in determining where the issuer, administrator or holder of digital assets has its centre of main interests; (b) is this the right concept to use where the place where an issuer, administrator or holder conducts the administration of its interests on a regular basis may not be ascertainable by third parties; and (c) could the analysis be different depending on the nature of the insolvent entity (notably an administrator vs an issuer vs a holder)?

Question 4

4.4 We assume that this question is referring to the contractual claim against the issuer or transferor of the digital asset rather than the custodian holding the digital asset as trustee for the claimant, hence why the question is not considering the proprietary claim in respect of the digital asset. We wonder if that should be made clear.

4.5 We agree that it is important to ask whether such a claim is a foreign currency claim, given the mandatory conversion of such claims into sterling on day one, but we wonder if the nature of the digital asset in question could impact on this question. For example, would the analysis be different for a debt denominated in a cryptocurrency (where the cryptocurrency is properly characterised as "money") or a digital asset backed by a fiat currency such as certain types of stablecoin that may, arguably, have more of the features of "money" or "currency". We also wonder whether this question should ask whether the claim is a debt claim or a damages claim, as the distinction could be important in respect of how the claim is valued and the denomination of the currency of the claim (e.g. if the purchase price under a failed trade in a cryptocurrency is denominated in a fiat currency) This issue was, of course, considered in some detail in the Law Commission's Papers (see e.g. paragraphs 9.8 – 9.16 of the Final Report).

4.6 Focussing on the most straight-forward example, that of a debt denominated in a cryptocurrency (where the cryptocurrency is properly characterised as money), it seems that it would be necessary to adopt a particularly purposive approach in order for that debt to be treated as a “debt in a foreign currency” for the purposes of Rule 14.21 of the Insolvency (England and Wales) Rules 2016. This is because, splitting the wording into its two component parts:

(i) there is nothing intrinsically “*foreign*” about a cryptocurrency that is intended to be used globally, both in the UK and elsewhere[2]; and

[2] It may be argued that the currency is “foreign” in that it is issued or created by an entity in a jurisdiction outside the UK, but it would follow from this approach that a cryptocurrency created in the United Kingdom would not fall within Insolvency Rule 14.21. This distinction would be somewhat arbitrary, given that it would result in some claims remaining exposed to moves in cryptocurrency valuations while others were not.

(ii) it could be argued that a specific digital currency was not currently a "currency" in the generally understood sense of that term, if it was not widely accepted as a means for payment in retail or commercial transactions.[3]

4.7 While there are challenges in interpreting Insolvency Rule 14.21 as including claims in cryptocurrencies, there would be clear practical benefits if this approach could be adopted, given the current volatility of cryptocurrency prices. The aims of Insolvency Rule 14.21 are (i) to remove foreign exchange risk and (ii) to facilitate distributions by insolvency officeholders. If Insolvency Rule 14.21 did not extend to cryptocurrency claims, the amount owed to a creditor with such a claim could vary significantly during an insolvency procedure, impacting on other creditors' recoveries, causing uncertainty and giving rise to technical issues on a distribution – what should a liquidator do, for example, if the value of a cryptocurrency claim increased or decreased significantly between a first and second distribution?

4.8 In the longer term, we consider that the likely broad range of policy considerations at the basis of determining this question and the need for legal certainty on this point may make that an appropriate matter for review by the Insolvency Rules Committee under sections 411 to 413 of the Insolvency Act 1986 and, after that review is completed, specific amendment to Rule 14.21 itself. In the interim, there may be a benefit in providing guidance as to what an insolvency officeholder might properly do when dealing with a claim denominated in, or otherwise relating to, a cryptocurrency that does not clearly fall within the mandatory conversion regime in Insolvency Rule 14.21. It may, for example, be argued that they could, in the interests of progressing the procedure, properly convert such claims as if the Rule did apply, as long as the creditor in question had the right to opt out of that conversion if they gave notice within a specified time.

4.9 If the claim is not a foreign currency claim falling under Rule 14.21 of the Insolvency (England and Wales) Rules 2016, there may be some uncertainty as to how a claim in respect of a digital asset, whether a debt claim or a damages claim, should be valued in an insolvency proceeding and this might be worth exploring in order to provide guidance for insolvency officeholders when valuing that claim in accordance with the procedure set out in Insolvency Rule 14.14.

4.10 Finally we wonder if this question should consider how the insolvency set-off rules would apply in respect of either a claim denominated in a cryptocurrency or a claim to digital assets, not least as Insolvency Rule 14.25(8)(b) assumes, for the purposes of insolvency set-off, that the relevant claim would have been converted into sterling pursuant to Insolvency Rule 14.21. It is noted, in this respect, that the drafting of Rule 14.25(8)(b) varies from that of Rule 14.21, as while the latter refers to a "*debt in a foreign currency*", Rule 14.25 refers to a debt "*payable in a currency other than sterling*", removing the requirement for that currency to be "*foreign*". It would seem to follow that a cryptocurrency claim could be treated as having been converted for the purposes of insolvency set-off (as long as it is treated as a "currency"), although it may not actually have been converted under Rule 14.21.

[3] It may be that different cryptocurrencies would be treated differently, depending on the extent to which they were accepted as payment (or satisfied any other relevant test under English law used to determine whether a cryptocurrency does or does not qualify as money), with a distinction potentially being drawn between currencies such as Bitcoin which are more widely recognised and are treated as legal currency in at least one foreign jurisdiction, and other, lesser used, cryptocurrencies.

Question 5

4.11 The volatility of digital assets poses specific challenges for insolvency officeholders, both because those officeholders face potential criticism if the value of those assets were to increase after their disposal and because out of the money creditors may attempt to put pressure on those officeholders to delay any disposal, on the basis that they are currently facing a zero return but that their return could increase if the value of the digital assets were to increase. This position may, in some respects, be viewed as analogous to officeholders appointed over an asset such as a shopping centre that is currently experiencing financial challenges, but which could become more valuable if market conditions were to improve.

4.12 The choice facing those insolvency officeholders is a potentially insidious one – if they dispose of the asset, they will face criticism both from those denied a potential upside and from other creditors if the assets were to subsequently increase in value. If, on the other hand, they chose not to sell, and the value of the assets subsequently fell, they would be accused of sitting on their hands while value seeped from the estate.

4.13 Insolvency officeholders would therefore be likely to welcome authoritative guidance, making it clear that insolvency officeholders who decided to sell digital assets should not face criticism if they acted in good faith, reasonably believing that the sale offered the best potential recovery for creditors as a whole, having first taken appropriate advice from those specialising in valuing such assets.

Question 6

4.14 There are a number of potential issues that require consideration in this context.

4.15 **Section 127 Insolvency Act 1986**: In a winding-up by the court, any disposition of the company's property made after the commencement of the winding-up is void, unless the court orders otherwise. It is unclear how this provision would work, in practice, in relation to blockchain/distributed ledger transactions that are, by their nature, irreversible. The transaction in question may be void as a matter of English law, but it would be treated by the rest of the market as having been completed.

4.16 This point is linked to the previous discussion relating to the Settlement Finality Regulations and Financial Collateral Arrangements (No2) Regulations, which disapply section 127 in specified cases.

4.17 **Section 241(2) of the Insolvency Act 1986**: An order may not be made under section 238 (*Transactions at an Undervalue*) or section 239 (*Preference*s) requiring the beneficiary of a transaction to pay any sum to the insolvency officeholder where that beneficiary acted in good faith and for value. It is unclear how easy it would be to assess whether these tests had been satisfied in the context of an anonymous distributed ledger transaction, but, more importantly, it is unclear how any such order would be enforced unless the beneficiary could be identified.

4.18 It could be argued, if the transaction took place through an exchange, that those operating that exchange could be summoned to court under section 236 of the Insolvency Act 1986 to share what information they had, being persons who had information concerning the company's business or property; but this would, at best, be a partial solution given that most such exchanges are currently located outside the United Kingdom and it remains an open question whether persons outside the jurisdiction can be summoned under section 236.

4.19 **Section 245(2) Insolvency Act 1986**: A floating charge created at a relevant time is invalid except to the extent that, inter alia, the value of the consideration for the creation of that charge consists of "money paid, or goods or services supplied, to the company". This raises the question of whether a payment in a cryptocurrency or the provision of other digital assets would satisfy this test. As a matter of policy, there is no obvious reason why they should not, but this would assume that:

(i) the cryptocurrency in question is "money". The question of whether a cryptocurrency is a "currency" is discussed in relation to Question 5 above. There is arguably greater scope for arguing that a cryptocurrency is "money" if the cryptocurrency satisfied the economic test for money as a means of exchange, unit of account and store of value; and/or

(ii) the digital assets supplied constitute "goods or services supplied to the company", the answer to which may require an analysis of the specific digital assets.

4.20 **Schedule 1 to the Insolvency Act 1986**: An administrator or administrative receiver has the power to borrow money. Would this include, given the answers to the previous questions, borrowing cryptocurrency?

Question 7

4.21 We note that there will be some overlap between this question and the new special administration regime that has been proposed for systemic and recognised digital settlement asset (DSA) payment systems and service providers. We assume that the question is asked outside of this context and instead is aimed at addressing how trust law would deal with such issues.

4.22 As a general principle, our preference would be to treat shortfalls arising under a pool of unallocated digital assets, held in trust by a custodian or other relevant intermediary, in accordance with normal trust principles for equitable tenancies in common. This would result in any shortfall being allocated *pro rata* (and not on a "first in, first out" basis) across the entitlements of account-holders or other investors in or in relation to the trust pool as beneficial co-owners: see *In the matter of Lehman Brothers International (Europe) [2010] EWHC at [232] – [244]*. We note that, in the public consultation on 28 November, Matt Kimber of the Law Commission suggested that there may be some limited circumstances (e.g. relating to retail investor holdings) in which a *pro rata* solution may not be appropriate, but we wonder whether this could be determined in equity or under the common law rather than by a direction under statute.

5 Point of Contact

5.1 Should you have any queries or require any clarification in respect of our response, please feel free to contact our chairperson or any of the members of the working group set out below:

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5.2 Other members of the Insolvency Law Committee and Financial Law Committee are listed here:

https://clls.org/committees/insolvency.html

https://clls.org/committees/financial.html