

THE CITY OF LONDON LAW SOCIETY INSOLVENCY LAW COMMITTEE
MINUTES OF THE MEETING HELD BY VIDEO CONFERENCE CALL
ON THURSDAY 15th SEPTEMBER 2022 AT 8.30am

Present: Jennifer Marshall, Allen & Overy LLP (chair)
 Ian Benjamin, Stephenson Harwood LLP
 Giles Boothman, Ashurst LLP
 Ian Fox, Dentons UK and Middle East LLP
 Joe Bannister, DAC Beachcroft LLP
 Katharina Crinson, Freshfields Bruckhaus Deringer LLP
 Emma Simmonds, Akin Gump Strauss Hauer & Feld
 Hamish Anderson, Norton Rose Fulbright LLP
 Inga West, Ashurst LLP
 Jo Windsor, Linklaters LLP
 Tim Symes, Stewarts Law LLP
 Gabrielle Ruiz, Clifford Chance LLP
 Peter Wiltshire, CMS Cameron McKenna LLP
 Melissa Coakley, Clifford Chance LLP
 Adrian Cohen, Proskauer Rose LLP
 Simon Thomas, Goodwin Procter (UK) LLP
 James Maltby, Hogan Lovells International LLP
 Ben Larkin, Jones Day

Apologies: David Ereira, Paul Hastings (Europe) LLP
 Catherine Balmond, Freshfields Bruckhaus Deringer LLP
 Dominic McCahill
 Kevin Pullen, Herbert Smith Freehills LLP
 Ben Klinger, Simons Muirhead Burton LLP
 Ross Miller, Simmons & Simmons LLP
 Ian Johnson, Slaughter & May

In attendance: Rebecca Oliver, Norton Rose Fulbright LLP (outgoing secretary)
 Helen Coverdale, Norton Rose Fulbright LLP (new secretary)
 Jamie Leader, Enyo Law LLP
 Matthew Rous, CLLS

1 Opening of meeting

Jennifer Marshall welcomed new member Emma Simmonds and new secretary Helen Coverdale who would be taking on the role from Rebecca Oliver, and noted that Giles Boothman would be retiring from the Committee. The Chair thanked Giles and Rebecca for their time with the Committee and noted that an application to join the Committee by Olga Galazoula had been approved by the Committee members by email.

2 The minutes of the meeting held on 26th May 2022 were approved.

3 Current consultations/proposals

Terms of reference	Working party	Comments/Update
A. Insolvency Service: consultation on the implementation of the UNCITRAL Model Law on the Recognition and Enforcement of Insolvency-Related Judgments and the UNCITRAL Model Law on Enterprise Group Insolvency in UK law (7 July 2022)	Jennifer Marshall Jo Windsor David Ereira Ian Fox Simon Thomas	Closing Date: 29 September 2022 The Committee discussed the overall approach of the proposals and considered a draft

<p>https://www.gov.uk/government/consultations/implementation-of-two-uncitral-model-laws-on-insolvency/implementation-of-two-uncitral-model-laws-on-insolvency-consultation#contents</p>		<p>response prepared by the working party. In particular there was concern that the government's stated intention to preserve the rule in <i>Gibbs</i> might not be achieved unless clarity is provided for the courts as to when and how to exercise their discretion and recognise an insolvency related judgment. There was further concern over adopting Article X without accompanying choice of law rules, such as in relation to security and set-off rights. The committee considered that Article X and the accompanying guidance should be built into Schedule 1 of CBIR, rather than simply include Article X as a document to which the court may have regard. It was also felt that the courts should have the ability to grant substantive as well as procedural relief and that this should be clarified.</p> <p>[Response submitted following meeting:</p>  <p>CLLS Response to UNCITRAL Model Law]</p>
<p>B. Law Commission: Digital Assets, Consultation Paper and Consultation Paper Summary (28 July 2022)</p> <p>https://www.lawcom.gov.uk/project/digital-assets/</p>	<p>A joint CLLS working group proposed with the Financial Law Committee. Simon Thomas and Jo Windsor will join to consider the insolvency related aspects.</p>	<p>Closing date: 4 November 2022</p>
<p>C. HM Treasury: consultation seeking views on establishing the Financial Market Infrastructure Special Administration Regime as the primary legal framework through which to address the</p>	<p>Giles Boothman Tim Symes Simon Thomas Jennifer Marshall</p>	<p>Response submitted 2 August 2022:</p> <p>https://www.citysolicitors.org.uk/insolvency/financial-market-infrastructure-special-administration-regime</p>

<p>failure of systemic digital settlement asset firms (31 May 2022)</p> <p>https://www.gov.uk/government/consultations/managing-the-failure-of-systemic-digital-settlement-asset-including-stablecoin-firms</p>		<p>rs.org.uk/storage/2022/08/UKP1-2017065734-v1-CLLS-Response-to-stablecoin-SAR-consultation.pdf</p>
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4 FCA published finalised guidance (FG22/4) on its approach to compromises

<https://www.fca.org.uk/publication/finalised-guidance/fg22-4.pdf>

Noted by the Committee. The FCA has arranged a webinar on Thursday 22 September 2022 on the Restructuring and Insolvency of FCA regulated firms.

5 The Payment and Electronic Money Institution Insolvency (England and Wales) (Amendment) Rules 2022 (SI 2022/847) were made on 18 July 2022 and come into force on 10 August 2022 to correct certain defects in The Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021 (SI 2021/1178)

https://www.legislation.gov.uk/uksi/2022/847/pdfs/uksi_20220847_en.pdf

https://www.legislation.gov.uk/uksi/2022/847/pdfs/uksiem_20220847_en.pdf

Noted by the Committee.

6 National Security and Investments Act 2021 – market guidance notes published by BEIS 19 July 2022

[CLLS-statement-on-share-security-BEIS-comments-1.pdf \(citysolicitors.org.uk\)](#)

[National Security and Investment: market guidance notes July 2022 - GOV.UK \(www.gov.uk\)](#)

The Committee noted that the July BEIS market guidance included commentary on the application of the NSIA to security arrangements: “The granting of types of share security where title to the shares is not transferred to the secured lender (or its nominee) is not a notifiable acquisition requiring mandatory notification, even if it involves an entity carrying on activities covered in the Notifiable Acquisition Regulations.” If legal title or control is passed in relation to shares falling within the Notifiable Acquisition Regulations, then notification before completion is required, so title transfer security is, as expected, intended to be notifiable in cases of national security risk. In addition, where security over shares leads to the transfer of voting rights following a default event, or where shares are sold on enforcement of the security, notifications may be required. The Committee discussed the ongoing issues of enforcement of share security at holdco level if appointing a receiver or liquidator lower down the corporate chain. There is a further stakeholder meeting with BEIS on 21 September.

7 Recent cases noted by the Committee

Rashid v Direct Savings Ltd [2022] 8 WLUK 108

Oceanfill Limited v Nuffield Wellbeing Limited and another [2022] EWHC 2178

Re Petropavlovsk plc (in administration) [2022] EWHC 2097

Re PGD Ltd [2022] EWHC 1801 (Ch)

Re Allied Wallet limited (In Liquidation), [2022] EWHC 1877 (Ch)

Barings (UK) Ltd & Ors v Galapagos SA [2022] EWHC 1633 (Ch)

Rushbrooke UK Ltd v 4 Designs Concept Ltd [2022] EWHC 1110 (Ch)

8 Any other business

None noted.

9 Next meeting

Thursday 17th November 2022 at 8.30am, due to be hosted by Peter Wiltshire, CMS Cameron McKenna Nabarro Olswang LLP. Joe Bannister DAC Beachcroft LLP to host the following meeting on 19th January 2023.

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