

Minutes of the BLP meeting 10 July 2009

Apologies

1. Apologies were received from Tom Huertas (FSA), Bill Tudor-John (FMLC) and Guy Sears (IMA).

Minutes of the previous meeting

2. The minutes of the previous meeting of the BLP held on Tuesday 7 April were **agreed** as an accurate record of proceedings and it **noted** that they would be published on the BLP section of the Treasury website.

Horizon scanning

3. The BLP **noted** that proposals for investment bank insolvency as discussed in the Treasury consultation document *Developing effective resolution arrangements for investment banks* (May 2009) are being considered by another stakeholder group, the Investment Banking Advisory Panel (IBAP). The BLP **agreed** that the secretariat would circulate a document setting out IBAP's membership and structure. It was **agreed** that it would be useful for the BLP to consider IBAP's findings in due course.
4. Industry members asked whether there would be discussion of further issues arising from the resolution of Dunfermline building society, such as communication of information about resolution to industry, It was also suggested that it would be useful to provide a glossary of terms used in a resolution. The BLP **noted** that the Authorities are responsible for communicating with industry about a resolution, and the Treasury **agreed** that it would invite officials directly involved with the Dunfermline resolution to discuss lessons learned with the Panel.
5. The Panel **noted** the powers under the Banking Act (section 255(3)) to make provision for the purpose of implementation of amendments to the Financial Collateral Arrangements Directive, and **agreed** that this would be a suitable subject for further discussion by the Panel.
6. The Panel **noted** Treasury paper *Reforming financial markets*, and that there would be a new Bill to implement those aspects requiring legislation provisionally entitled *the Financial Services and Business Bill*.

Terms of reference and advice giving process

7. The BLP **noted** the draft terms of reference, **agreed** that further consideration should be given to the final drafting in light of members' comments, and **agreed** that they should be approved at the next full meeting of the Panel.
8. The BLP **noted** the *Banking Act 2009 (Restriction of Partial Property Transfers) (Amendment) Order 2009*, made on 8 July and coming into force 9 July 2009, and **noted** Ministers' appreciation of the advice given by the subgroup on partial transfer safeguards in development of the order. The BLP confirmed that as a result of the changes, the provisions of the original Order would not prevent lawyers from giving give "clean" opinions on the effectiveness of set-off, netting and title transfer collateral arrangements under English law.
9. The BLP **noted** that because of the necessity of making the order before the summer recess, Ministers had considered the subgroup's advice in draft before making final decisions, and that in future sufficient time should be given for Ministers to consider final advice. The BLP **noted** that in future the secretariat will set out a detailed timetable to ensure that this happens wherever possible, including scope for Ministers to give an initial response to draft advice, and for the BLP to respond where Minister's have specific questions about the recommendations.
10. The BLP **noted** the Treasury's comments that the input of the legal experts on the group had been highly beneficial to the drafting of the amending Order, and **suggested** that the Treasury consider how such input could be built into the process in the case of further secondary legislation prepared on the advice of the BLP.
11. The BLP **noted** that the subgroup's recommendation on the small companies carve-out from set-off and netting protection had not been taken up in the amending Order, and further **noted** that this is because of the practical implications for the Authorities' ability to carry out a successful resolution of a failing institution, rather than because of an objection in principle. The BLP **agreed** that the safeguards subgroup should be reconvened to take forward further work on this issue.
12. The BLP **noted** that the Treasury does not wish to influence to the BLP's advice, as its purpose is to represent an expert industry view, and **agreed** to consider how this can be reflected in the terms of reference.

Safeguards

13. The Panel **agreed** to establish a subgroup to be chaired by Dorothy Livingston (CLLS), to produce a further piece of advice on the safeguards order: including the small companies carve-out, issues around article 12, and the extent of article 4 (Community law). It was **agreed** that it might be necessary to split the group into two subgroups, one looking at the small companies issue and another looking at the other issues, and that this would be considered by the subgroup.

Code of Practice

14. The BLP **noted** the draft advice arising from the first meeting, and **noted** that the section on 'sectoral' issues has yet to be developed. It was **agreed** that considering the earlier discussion about allowing sufficient time for advice to be given, the timetable for providing advice on the Code of Practice should be extended, with a view to offering final advice around October – November,

Insurance companies

15. The BLP **noted** that Ministers were considering options for excluding insurance companies from the definition of 'bank' in the Banking Act 2009, and would make a statement in due course. The BLP **noted** that an alternative approach might be to consider whether instead to look at the Regulated Activities Order, which establishes insurers' deposit-taking permission.

Building society insolvency

16. The BLP **noted** that the Treasury would shortly be releasing a consultation document on building society insolvency and special administration, leading to secondary legislation under Part 2 and Part 3 of the Banking Act 2009. Members noted the BLP's statutory role to advise on such secondary legislation, and **agreed** that a subgroup should be established, and agreed that the Building Societies Association would nominate an appropriate person from their organisation to chair the group.