

Minutes of the BLP meeting 14 October 2009

Apologies

1. Apologies were received from Bill Tudor John (FMLC), and Joanna Perkins (FMLC alternate) attended in his place. Apologies were received from Richard Heis (R3), and Catherine Burton (R3 alternate) attended in his place. Apologies were received from Adrian Coles (BSA) and Jeremy Palmer (BSA alternate).

Minutes of the previous meeting

2. The minutes of the previous meeting of the BLP held on Tuesday 10 July 2009 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 panel discuss the Banking Act (section 255(3)) to make provision for the purpose of implementation of amendments to the Financial Collateral Arrangements Directive, and **noted** that this matter was of interest to the Financial Markets Law Committee (FMLC). The Panel **agreed** that Emil Levendoglu, Dorothy Livingston and Joanna Perkins would arrange for the matter to be raised with the relevant FMLC working group.

Terms of reference

4. The Panel **noted** the revised terms of reference, having been amended to incorporate comments from the paper from Guy Sears.
5. The Panel **agreed** that additional changes should be made:
 - a. clarifying that all members may nominate alternates;
 - b. replacing the reference to mandatory presence of the authorities with a more appropriate reference to quorum;
 - c. clarifying the point about the 'submitter's permission' being required for the advice; and
 - d. making minor textual changes.

6. The Panel **agreed** that these changes would be agreed by correspondence and be published on the BLP section of the HMT website.

Safeguards

7. The Panel **noted** that the safeguards subgroup chaired by Dorothy Livingston (CLLS) had met on 2 October. The chair reported that the subgroup had discussed the small companies carve-out, the reference to community law, and remedies for breaches of the order.
8. On the small companies point, the Panel **noted** that the subgroup had considered the letter from the FSA outlining that the small companies carve-out did not result in banks having to account for their exposure to small companies on a gross basis; but that nonetheless the subgroup believes that further work needs to be done. The Panel **noted** that the chair would be working with the secretariat to gather information around what types of small companies typically form part of larger groups, whether these small companies are better off in a resolution with group set-off and netting arrangements protected, and whether banks typically hold information that would enable them to identify groups within the timeframe of a resolution.
9. The Panel **noted** that the Chair is currently working with external stakeholders to identify what material problems arise from the reference to community law in the safeguards order, and that the results will be considered by the subgroup in due course.
10. The Panel **noted** that the subgroup is currently looking at remedies for breaches of the safeguards order, and Chair outlined the subgroups concern that currently counterparties may have to claim before they know whether the order has been breached; and that the authorities do not have a formal duty to notify counterparties of breaches.
11. The Panel **noted** that the next meeting of the subgroup would be arranged shortly, when suitable information about the small companies issue had been gathered, and that the subgroup would then formally report back.

Code of Practice

12. The group noted remarks from Guy Sears, Chair of the subgroup on the Code of Practice, about progress made in developing formal advice to the Treasury. The advice will recommend clarifying certain aspects of the Bill, such as the 'no creditor worse off' safeguard and trusts provisions; and also how the SRR measures will affect 'sectoral issues' such as depositors and bond markets. The Chair noted that the next meeting will be arranged when the authorities

have provided a paper setting out changes that they are considering to the Code, which the subgroup will also comment on in the advice.

Insurance companies

13. The BLP **noted** that Ministers were considering options for excluding insurance companies from the definition of 'bank' in the Banking Act 2009.

Building society insolvency

14. The Panel **noted** that the building society insolvency subgroup will meet on 9 November, and will be chaired by Chris Lawrenson, head of legal services at the BSA, and **agreed** that those who wish to be a member of the subgroup should email the secretariat.

Dunfermline

15. The Panel heard a short presentation from Catherine Adams, leader of the resolution team at HM Treasury, and Victoria Cleland from the Bank of England (which is the lead resolution authority), about lessons learned from the resolution of Dunfermline. The Panel **noted** that the Authorities considered that the resolution had been successful in meeting the special resolution objectives.
16. The Panel discussed issues arising around derivatives in the Dunfermline resolution, in particular that in the period immediately following the resolution counterparties were unsure where their instruments had been transferred. The Panel **noted** that Bank of England officials had contacted counterparties individually, and industry members suggested that it might have been helpful if there had been in a more formal mechanism. In particular, the Panel **noted** comments from industry members that it would have been helpful if generic language relating to ISDA master agreements had been on the face of the transfer order. The Panel **noted** the challenges inherent in up a transfer order over a weekend, and that it might be useful for suitable generic language to be prepared ahead of future resolutions; and **agreed** that Panel members would liaise with the authorities on this point.