

Minutes of the Banking Liaison Panel 25 April 2012

Attendees and Apologies

1. David Lunn (HM Treasury) chaired the meeting. Others attending were Elisabeth Noble, Laura Wilson, Munaj Ahmed and Rob Elliot (HM Treasury), as well as Michael McKersie (Association of British Insurers), Roger Brown and Rob Beattie (British Bankers' Association), Alex Kuczynski (Financial Services Compensation Scheme), Dorothy Livingston (City of London Law Society), Jeremy Palmer (Building Societies Association), Laura Bentham and Roland Susman (Financial Markets Law Committee), Peter Brierley (Bank of England), Tom Crossland (Financial Services Authority) and Kate Sumpter (International Swaps and Derivatives Association).
2. Apologies were received from Richard Heis (Association of Business Recovery Professionals), Joanna Perkins (Financial Markets Law Committee), Geoffrey Davies and Miles Bake (Bank of England), Peter Werner and Edward Murray (International Swaps and Derivatives Association), Paul Mayo (Insolvency Service) and Guy Sears (Investment Management Association).

Minutes from the previous meeting

3. The minutes of the last BLP meeting held on 20 October 2011 were approved prior to this meeting by Panel members.

Small Companies Carve Out from partial property transfer arrangement

4. The Bank of England presented a working level paper to the Panel which responds to the BLP Working Group paper discussed at the BLP meeting on 21 July 2011.
5. Issues discussed by the Panel included the ambiguity surrounding various definitions in the Safeguards Order such as 'retail deposits', 'eligible claimants', and 'small business'.
6. The roles of the bridge bank, the resolution authorities, and any administrator that might be used in the event of resolution were discussed and it was agreed that in order for the resolution tool to be effective, any asset transfer would need to be completed as soon as possible.
7. Concerns raised by the Panel centred around the issue of the ability of small companies to access banking facilities if their bank entered resolution and they were negatively impacted by a carve out. The Panel discussed whether it was better to change aspects of the Order to improve the situation, or whether to revise the Code of Practice between the Bank of England, HM Treasury and the administrator to address these concerns.
8. The ability of banks to distinguish between small and large companies in the event of a resolution was discussed. The Panel noted that banks currently have the ability to identify customers by group and so should (with exceptions) be able to distinguish between small and large companies.

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9. The BLP Working Group agreed to reflect issues raised in the Bank of England's working level paper and subsequent discussion to prepare a final paper on Small Companies and the Safeguards Order and present it to the Panel at a future meeting.

Bail-in Tools and Depositor Preference

10. The focus of the Panel's discussion centred around the technical consultation paper on the bail-in write down tools issued by the European Commission at the end of March 2012, prior to the likely publication of its draft proposal for an EU Crisis Management Framework in June 2012.
11. The Panel also received by way of background, copies of responses to the Commission's paper from the Building Societies Association, the ISDA, and the CLLS.
12. The Panel agreed that the Point of Entry for using a bail-in tool as described in the Commission's consultation was appropriate but stressed that, for it to be useful it would need to be instigated while the firm was still a going concern. It was agreed that the tool was useful for a going concern firm, while questions were raised around the application of the tool around a firm that was a gone concern, in particular the extent to which it changed current insolvency procedures in relation to debt seniority.
13. The bail-in tool was also discussed in the context of the 'no creditor worse off' policy. The Panel heard views that retrospectively including existing financial instruments might increase the cost for firms securing funding, as well as damage its core business with its existing customers. It was suggested to specify certain liabilities as bail-in-able as opposed to including all liabilities and listing exceptions. Providing exceptions for short term liabilities of 12 months or less would also push firms into more short term funding, which would increase instability concerns.
14. The hierarchy of claims of creditors was discussed in relation to the consultation paper. Current proposals suggested either sequential write downs of bail-in-able liabilities or a pari passu approach. Also questions were raised around the practicality of conversion rates from debt to equity, the tax implications for the investors concerned, as well as the position of current equity holders.
15. Finally, the Panel discussed the likely implementation of bail-in tools across different countries. It was agreed that it would be preferable for rules to be similar across EU countries, while recognising that it was likely there will be scope for individual regulatory authorities to tailor any EU directive that is unlikely to be overly prescriptive. Overall the Panel agreed that the use of bail-in tools was appropriate but highlighted that more work was needed to address issues around the practicality of its use.

Any Other Business

16. It was suggested that a future meeting might discuss the Financial Services Bill that was currently in Parliament. Members were invited to submit suggestions for future agenda items before the Banking Liaison Panel next meets.