



## Minutes

Meeting date: 19 January 2016

Meeting time: 10.00 – 12.00, HM Treasury, 1 Horse Guards Road, 2/39

### Attendees

HM Treasury	Suzy Kantor (chair), Mushtaq Ahmed (secretariat), Daniel Jones, Catherine McCloskey, Steven Dodkins, Harriet Nowell-Smith, Stephen Atkinson
Insolvency Service	Paul Mayo
Bank of England	Peter Brierley, George Johnston
PRA	Jonathan Sepanski
FCA	Jane Moore
FSCS	Karen Gibbons, Casey McGrath
Association of Business Recovery Professionals	Richard Heis, Mike Pink
British Bankers Association	Adam Cull
Building Societies Association	Jeremy Palmer
City of London Law Society	Dorothy Livingston
Association for Financial Markets in Europe	Oliver Moullin
Financial Markets Law Committee	Joanna Perkins
ISDA	Peter Werner
Investment Association	Susan Wright

### Apologies

European Association of CCP Clearing Houses

### **Panel administration – agenda item 1**

1. Minutes of the meeting on 18 September 2015 and BLP annual reports for 2013/14 and 2014/15 were agreed.
2. The Secretariat will resume uploading summaries of meetings onto the Banking Liaison Panel page of the gov.uk website.

### **Forward look on upcoming work – agenda item 2**

3. The Treasury outlined upcoming work of interest to Panel members, including:
  - a. Investment Bank Special Administration Regime (SAR). HM Treasury is preparing its response to the recommendation Bloxham review made for improving the SAR. HMT will publish a consultation on its proposals in Q1 2016. This was discussed further under agenda item 3.
  - b. BRRD consultation. The Treasury is currently consulting on a small number of changes to clarify and strengthen the UK's transposition of the BRRD and to address directly the issue of powers to resolve branches of third country firms, independently of the home authority. This was discussed further under agenda item 4.
  - c. HMT insolvency consequentials. There are a number of recent and upcoming changes to general corporate insolvency law. The Treasury's modified insolvency regimes are being updated to reflect the changes. This was discussed further under agenda item 6.
  - d. Non-bank resolution. The Treasury has begun consideration of the main policy issues to be addressed in relation to payments and settlements systems SAR. This was discussed further under agenda item 7. The European Commission is planning to publish a legislative framework for the recovery and resolution of central counterparties in Q1/Q2 2016. The FSB has also established working group which report on CCP resolvability by the end of 2016.
4. With the EBA's MREL review due to take place in 2016, Adam Cull asked for clarification on the workstream and whether any legislative proposals were to be taken forward. Treasury officials will provide further details in the next meeting, as plans develop.

### **Investment Bank SAR – agenda item 3**

5. The Treasury outlined the accompanying paper on proposals they are considering to make to the SAR in response to the Bloxham review. The discussion covered bar dates, transfers, cost allocations, information sharing and cooperation with the FSCS, and the preservation of tax wrappers.
6. On bar dates, the Treasury proposed to empower administrators to set a hard bar date after the use of a soft bar date for custody assets, extend the bar date mechanism to include client money, and extend distribution permissions.
7. On transfers, the Treasury is working to address some of the difficulties highlighted by Bloxham involved in the transfer of client assets. The discussion covered the Treasury's plans to introduce statutory novation of client contracts without the need of individual client consent and provision

to override restrictions which might otherwise give a client the right to object to a transfer. Noting the complexity of the issues in this area, particularly with respect to netting and set off arrangements, the Treasury proposed a sub-group of the BLP look at the issue, and to seek views at consultation. The Treasury confirmed it would contact Panel Members that expressed interest in joining a sub-group, and other members who may be interested were invited to contact the BLP secretariat.

8. Panel Members indicated that the method used to value client claims on the pool of client money in the client estate can result in anomalous situations. It was noted that proposals in the forthcoming FCA discussion paper (to be published alongside the Treasury's consultation document) would go some way to addressing these problems.
9. Bloxham made a number of recommendations concerning the allocation of costs incurred during the course of a SAR. The Treasury plans to make a number of changes in this area, which will make the allocation process simpler and ensure costs fall equitably between the client estate and the firm's estate. The proposed changes include giving administrators the power to allocate costs arising as a result of a firm's non-compliance with regulatory obligations to the firm (recommendations 12 and 45), and the implementation of recommendation 46, which would empower administrators to transfer amounts between the firm's bank accounts and client accounts following a reconciliation that revealed a discrepancy according to the firm's records.
10. The Treasury no longer plans to introduce a duty for the FSCS to cooperate with administrators. Given that the FSCS already has duties to pay compensation to clients and, therefore, to work with administrators, it is unclear what benefit a general duty of cooperation would add. Panel Members were supportive of this approach.
11. At the September 2015 BLP meeting, Panel Members asked the Treasury to explore what measures could be implemented to ensure the preservation of tax wrappers in a transfer. The Treasury has worked with HMRC to review the current regulations, and has come to the conclusion that account holders of ISAs and SIPPs would retain their tax status in a transfer. The Treasury therefore proposes no further action at this stage.

#### **BRRD consultation – agenda item 4**

12. The Treasury outlined the proposals they are currently consulting on. The consultation, which closes on the 25<sup>th</sup> February 2015, covers:
  - New powers for the Bank of England and the Treasury to ensure the effectiveness of contractual write-down and conversion provisions by preventing them from being 'switched off' by the Banking Act rules on default event rights, where appropriate.
  - Two new specific early intervention powers for the PRA and the FCA: (i) the power to require the removal and replacement of directors and senior managers; and (ii) the power to appoint a temporary manager. In addition, there would be new powers for the PRA and FCA to call a shareholder meeting if the management body had been required to call a meeting, and had failed to do so.
  - New powers for the Bank of England to resolve a branch of a third country institution, independently of the third country resolution authority, where the relevant conditions are met.
13. Many of the issues were discussed at the September 2015 BLP meeting, and the consultation document reflects a number of the comments made at that meeting – for example, the use of the term "temporary manager" rather than "temporary administrator".
14. Panel members asked for clarification on the changes to default event provisions. The Treasury and the Bank of England explained that default event provisions would remain 'switched off',

and that the Bank or Treasury will only activate selected default event right provisions to support an intervention. Treasury and Bank of England officials agreed that it would be useful to update the Code of Practice, to further clarify the changes to default event provisions and the proposed changes of the BRRD consultation more generally.

15. Separately, a Panel Member raised questions over the Article 55 of the BRRD, highlighting some of the problems faced by firms in complying with the requirement. The PRA outlined their approach. On 25 November 2015 the PRA issued a modification by consent, whereby institutions can apply for a waiver disapplying the application of the contractual bail-requirement where compliance with them is impracticable. The modification ends on 30 June 2016. Treasury officials pointed out that they are aware of the issues, and will continue to engage with the Commission.

#### **MREL consultation papers – agenda item 5**

16. The Bank of England provided a brief outline of the Bank of England's approach to setting MREL and the PRA's consultation paper on the interaction between capital buffers and MREL.
17. Panel members highlighted concerns over the impact of the proposals on small to medium sized banks. Bank of England officials noted the concerns and pointed out that stakeholders would have a chance to engage more formally with the Bank through the consultation process.

#### **HMT insolvency consequentials – agenda item 6**

18. The Treasury outlined their approach to updating HMT's modified insolvency regimes in line with the changes to general corporate insolvency law brought in by Department for Business, Innovation and Skills (BIS). The changes, which streamline the insolvency process, commenced or will be commenced in 4 tranches: May 2015, October 2015, April 2016 and October 2016. Along with the reforms to creditor meetings and notices in October 2016, the Insolvency Service will also be modernising the insolvency rules, to ensure that they reflect current business practice.
19. The Treasury is finalising draft regulations to update its modified insolvency regimes in line with the first three tranches of changes, which should come into force in May 2016. The Treasury plans to 'temporarily' save its legislation from the October 2016 changes, to allow more time to engage with stakeholders, and enable work on the reforms and rules to be completed together.
20. Views were sought on whether the removal of physical creditor meetings as the default position in financial sector would raise any issues for the financial sector. Two Panel Members felt that physical creditor meetings provide an effective tool to make decisions, and expressed a preference for retaining physical creditor meetings as the default tool for making decisions.
21. The Insolvency Service pointed out that the changes do not mean that physical creditor meetings cannot take place, but that certain requirements would need to be met (e.g it has been requested by 10% of the total number of creditors). The intention of the reforms is to encourage greater use of electronic and remote means of communication where it is appropriate.

#### **Payment and settlement systems SAR-agenda item 7**

22. The Treasury outlined the main features of the Special Administration Regime for payment and settlement systems. The Treasury intends to draft rules for the SAR in 2016 once the general corporate insolvency rules have been modernised.
23. The designation process for service providers was also outlined. Part 6 of the Financial Services Banking Reform Act 2013 allows the Treasury to designate companies that provide services to

payment and settlement systems to be eligible for the SAR. Before making an order, the Treasury is required to consult the company to be designated, the company to which the company provides services and the regulators. Views were sought on how the consultation would work in practice. Panel members were in agreement with the approach as set out in the accompanying paper.

#### **AOB – agenda item 9**

24. The Treasury outlined the provisional plan for the next meeting in April 2016, which is expected to provide an update on Article 55 of the BRRD, European proposals on MREL/TLAC implementation and the Investment SAR consultation.