



Minutes

Meeting date: 18 September 2015

Meeting time: 09.00 – 11.00, HM Treasury, 1 Horse Guards Road, 2/39

Attendees

HM Treasury	Suzy Kantor (chair), Thea Goodsell (secretariat), Daniel Jones, Catherine McCloskey, Elisabeth Noble, Stephen Atkinson
Insolvency Service	Sam Roberts
Bank of England	Peter Brierley, George Johnston
PRA	Henry Knox, John Sepanski
FCA	Jane Moore, Mhairi Colvin
FSCS	Alex Kuczynski
Association of Business Recovery Professionals	Samantha Bewick, Mike Pink
British Bankers Association	Adam Cull
City of London Law Society	Dorothy Livingston
European Association of CCP clearing houses	Tim Grange
Financial Markets Law Committee	Joanna Perkins, Jennifer Enwezor
ISDA	Peter Werner
Investment Association	Susan Wright

Apologies

- Building Societies Association
- Association for Financial Markets in Europe

Panel administration – agenda item 1

1. Minutes of the 9 September 2014 and 8 January 2015 minutes were circulated in meeting papers. Members to contact secretariat by 25 September with comments.
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. Following the transposition of the Bank Recovery and Resolution Directive (BRRD), a number of technical and clarificatory amendments; and additional consideration of resolution powers for the independent resolution of third country branches.
 - b. An upcoming consultation on the Government response to Peter Bloxham's report into the Investment Bank SAR
 - c. Consequential amendments to special insolvency regimes for financial sector firms, resulting from the Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015, and the proposed new insolvency rules
 - d. Ongoing work on EU proposals for a CCP recovery and resolution framework
4. Panel members raised questions about whether there would be further revisions to the Banking Act 2009: Special Resolution Regime Code of Practice. In particular, there may be room for clarification in the explanation of the safeguards protecting set off and netting. The Treasury explained that the Code of Practice was a living document, that would be updated to reflect changes in the Special Resolution Regime, and further changes may be necessary as a result of the work discussed here. Treasury welcomes comments on the Code, but may group any changes with other necessary amendments. Any areas where the Code was felt to be potentially misleading or unclear, e.g. in light of changes made to the UK regime to transpose the BRRD, would be of particular interest.
5. Panel members agreed the forward look was helpful, and agreed that it should be a standing item for future meetings.

Independent resolution of non-EEA branches – agenda item 3

6. The Treasury outlined the accompanying paper on powers to independently resolve the branch of a non-EEA bank. Respondents to the July 2014 consultation on BRRD transposition agreed that the Bank of England should have powers over third country branches, but were mixed as to what powers the Bank should have. The Treasury and the Bank agree that powers to independently resolve third-country branches are backstop powers, only to be used where international coordination has failed – and when conditions set out in Article 96 of the BRRD are met. However, it would be helpful to ensure that UK resolution authorities have further powers for independent resolution of branches in line with the expectations under the BRRD. The Treasury has given further consideration to the issue, and now proposes to consult on detailed proposals.
7. The Treasury proposes that a limited range of additional powers be made available for independent resolution of third-country branches, and the normal safeguards, continuity provisions and No Creditor Worse Off (NCWO) compensation arrangements under the Banking Act 2009 would apply.
8. The Panel agreed that powers to transfer the liabilities, rights and assets of a branch would be useful, and an essential first step to resolution of a branch. The Panel discussed how much of

the business of the branch it would be helpful for the resolution authority to transfer in order to effect a resolution.

9. Considering the proposed definition of the 'business of the branch', some members raised concerns that the proposal in the paper may be overly broad. –In particular, it was noted that not all the UK assets of a branch would necessarily directly result from the operations of the branch, and considered how this could be reflected in the Treasury's proposed definition of the business of the branch or in the resolution authority's approach to using these powers. As an alternative, a narrower power, plus asset freezing powers, was suggested. Treasury officials noted that, in line with the approach to existing resolution tools (e.g. the transfer of business powers), it is proposed that the powers are broadly framed in terms of assets, rights and liabilities of the entity concerned in order to ensure the resolution authority can act in relation to any business of the branch. However, as for the existing resolution tools, the resolution authority must apply the powers in line with the special resolution objectives, including the objective of avoiding interfering with property rights in contravention of a Convention right within the meaning of the Human Rights Act 1998 and the safeguards arrangement would apply, which ensures the powers are applied to the extent appropriate.
10. One panel member suggested that the independent resolution powers should be extended to un-authorised entities that are part of banking groups.
11. Panel members discussed practical considerations of conducting an independent resolution of a branch, including considerations about access to information and IT systems.
12. The Panel also discussed what insolvency counterfactual to use in calculating NCWO compensation. There were a range of views on what approach would be appropriate – reflecting the fact that – in any insolvency – the UK branch of a non-EEA firm may be wound up either locally, or as part of the home jurisdiction's proceedings.
13. The Treasury plans on consulting on the proposed approach in relation to branch resolution powers later this year.

BRRD transposition (further measures) – agenda item 4

14. The Treasury outlined the accompanying paper – the Treasury plans to make technical and clarificatory amendments to the legislation transposing the BRRD. Treasury is minded to publish a draft order concerning such amendments alongside the consultation on branches. The Panel was asked to comment on an early draft.
15. Panel members sought clarification on the interaction of proposals regarding default events, and the proposals to have specific powers for the regulator to appoint temporary administrators as per article 29 of the BRRD as an early intervention measure. Some Panel members felt that the appointment of a "temporary administrator" (in BRRD) terminology was likely to trigger default event rights unless the authorities had the ability to prevent that. Treasury officials noted that consideration could be given to the extension of section 48Z of the Banking Act 2009 in order to ensure that default event rights are not automatically triggered through the appointment of a temporary administrator. This would be consistent with the definition of "crisis prevention measure" in section 48Z which includes the appointment of a temporary administrator (by virtue of the cross-reference to the definition in Point (101) of Article 2(1) of the BRRD).
16. The panel discussed whether the BRRD's terminology in article 29 (which refers to a "temporary administrator") was helpful, and whether an alternative might be found that avoided ambiguity and better reflected the specifics of the UK system and preconceptions regarding the title 'administrator', as well as the existence of contracts that have 'the appointment of an administrator' (or similar) as trigger for default.

SAR for investment banks – agenda item 5

17. The Treasury outlined the accompanying paper on proposals the Treasury is considering to make to the Investment Bank Special Administration Regime in response to the Bloxham Review. The Treasury consulted Panel members on proposals for information sharing and cooperation duties.
18. Panel members suggested entities and banks holding client assets and money should cooperate with transfers of these monies and assets to new firms in addition to cooperating with administrators when they are returned to clients. Panel members noted that CASS rules confuse contractual and trust obligations with respect to client money, but it was acknowledged that this would be addressed in the new CASS rules.
19. Regarding Recommendation 25, panel members suggested counterparties would need a right to appeal if the burden to cooperate with administrator requests for information were too onerous. A number of panel members made the point that HMRC should not be able to prejudice people's tax planning, as currently the preservation of a tax wrapper in the event of a transfer is at the discretion of HMRC. They asked HMRC make the policy clear.
20. Panel members noted the guidance protocol that exists for market infrastructure bodies and administrators. Treasury officials confirmed they would work with stakeholders to establish if the protocol is adequate. One panel member noted Recommendations 22 and 26 do not take account of the position of institutional investors or the effect such duties would have on them. Some panel members suggested administrators would welcome caveated information from market infrastructure bodies to increase the speed of an administration. Treasury confirmed it will work with interested panel members to further develop these proposals.
21. One panel member indicated some terminology in the Bloxham Review was confusing and offered to help Treasury to produce a glossary of terms.

Changes to the insolvency rules – agenda item 6

22. The Insolvency Service presented their work on modernising the insolvency rules. These changes will be a consolidated version of insolvency rules, with modernised language, simplifications, and common parts across the procedures. The rules will also incorporate red tape challenge measures introduced through the Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015. The new rules are currently scheduled to come into effect in October 2016. The Insolvency Service is working through consequential amendments to special insolvency and administration regimes, including those for financial services firms.
23. One policy change introduced by the red tape challenge measures was the change from creditor meetings to creditor decision-making. Panel members discussed the appropriateness of this approach being taken for financial services firms.
24. As work on financial sector insolvency rules progresses, more detailed information on proposed changes will be brought to the Panel. Panel members were invited to contact the Insolvency Service if they wished to be included in part of their regular industry consultations.

AOB – agenda item 7

25. The Treasury explained that the next meeting is expected to cover EU proposals on CCP resolution, and further policy proposals on the SAR. The meeting will be in December or January, depending on the date of publication of the Commission's legislative proposal for CCP resolution.