



## Minutes

Meeting date: 21 April 2016

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

### Attendees

HM Treasury	Suzy Kantor (chair), Mushtaq Ahmed (secretariat), Daniel Jones, Laura Mountford, Chris Rusbridge, Steven Dodkins, Harriet Nowell-Smith
Insolvency Service	Paul Mayo
Bank of England	Peter Brierley, George Johnston
PRA	Dana Andreicut
FCA	Jane Moore, John Carroll
FSCS	Karen Gibbons, Casey McGrath
Association of Business Recovery Professionals	Richard Heis, Mike Pink
British Bankers Association	Adam Cull
City of London Law Society	Dorothy Livingston
Association for Financial Markets in Europe	Oliver Moullin, Charlie Bannister
Financial Markets Law Committee	Joanna Perkins, Jennifer Enwezor
ISDA	Peter Werner
Investment Association	Susan Wright

### Apologies

European Association of CCP Clearing Houses  
Building Societies Association

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

1. Minutes of the meeting on 21 January 2016 and BLP annual report for 2015/16 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. BRRD consultation. The consultation, which proposed a small number of changes to clarify and strengthen the UK's transposition of the BRRD, concluded on 25<sup>th</sup> February 2016. The Government's response was discussed further under item 3.
  - b. BRRD Delegated Regulation published since last BLP meeting. An overview of recently published Delegated Regulations was provided to the Panel. The Regulations covered a wide range of areas, including further guidance on the content of recovery and resolution plans and the operational functioning of resolution colleges.
  - c. FSB work streams. An outline of the FSB's (Financial Stability Board) work on resolution policy was provided. This includes Internal TLAC, funding in resolution and operational continuity.
  - d. Resolvability of CCPs. The Treasury highlighted international work on CCP recovery and resolution, including the FSB's plan to publish a consultation on standards or guidance on resolution issues related to CCPs.
  - e. Investment bank special administration regime (SAR). The Government has now concluded the consultation.
4. The Treasury updated Panel members on TLAC/MREL, including the Commission's proposal to bring forward a legislative proposal by the end of the year aligning MREL with the global TLAC standard. The Bank of England are considering responses to the MREL consultation, and hope to finalise a policy statement by the middle of 2016.
5. The Treasury also set out the Government's plan for introducing rules for the payments and settlement systems special administration regime. The Government will not introduce rules until the insolvency rules modernisation project is complete. The Treasury has begun consideration of the main policy issues to be addressed in relation to the payments and settlements systems SAR, and will update the Panel as work progresses.
6. A couple of Panel members asked whether the BLP meetings could be used to discuss broader regulatory issues such as ring fencing and the capital framework. The BLP's Terms of Reference state that the purpose of the Panel is to advise the Treasury about the effect of the special resolution regime on: (a) banks, banking group companies and investment firms, (b) persons with whom they do business, and (c) the financial markets. Other forum may be more appropriate to discuss the broader regulatory issues.

### **BRRD consultation – agenda item 3**

7. The Treasury outlined the accompanying paper, which set out the Treasury's proposed response to the consultation responses. The consultation covered:

- 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.
8. On the proposed approach to default event provisions, consultation respondents were broadly supportive of the Government’s policy intention, but requested greater clarity over which contracts or contractual provisions would be permitted to take effect. In response to this, the Government will provide further guidance in chapter 7 of the Code of Practice. Panel members were supportive of the approach.
  9. A summary of the proposals on early intervention was provided. Panel members were broadly supportive of the government’s approach, noting that it recognized the backstop nature of the powers, while ensuring the Bank of England has the necessary powers to resolve the UK branch of a third country institution, in the extraordinary scenario it would need to act independently.
  10. Panel members provided further thoughts on the definition of ‘business of a UK branch’. One Panel member asked whether the Bank would have the power to leave assets behind in an independent resolution, and whether a specific power is required. The Bank of England provided an initial view, suggesting that this power should be inherent when making a property transfer instrument. Given the broad nature of the definition, two other panel members asked for further clarity on which assets, rights and liabilities are covered by the definition. The Government will explore whether there is scope for further clarification in the Code of Practice.
  11. Beyond the issues related to the BRRD consultation, one Panel member suggested that the Code of Practice could provide clearer guidance on when resolution tools would be used on investment firms. The Government will consider this as part of the update to the Code of Practice.
  12. A draft of the updates to the Code of Practice will be circulated to Panel members.

#### **Article 55 – agenda item 4**

13. The PRA outlined their consultation, which sets out their approach to implementing Article 55 of the BRRD.
14. One Panel member asked about the FCA’s approach to implementing Article 55. The FCA set out their plan to mirror the PRA’s approach by implementing a permanent rule change. The FCA noted that the implementation of Article 55 has not been a major issue for FCA regulated firms.
15. Panel members are working through the PRA’s consultation and will provide a formal response. Two Panel members noted that an amendment at the EU level would be the best solution. The Treasury is engaging with the Commission on Article 55 and its challenges alongside ongoing BRRD developments at the EU level, as a part of broader engagement on the BRRD.

#### **Investment Bank SAR – agenda item 5**

16. The Treasury outlined the accompanying paper on the Investment Bank SAR. The consultation closed on 20 April 2016 and the Treasury is now considering responses.
17. At the BLP meeting on 21 January 2016 a subgroup was established to consider i) proposed reforms to facilitate the transfer of the business of a failed investment firm that has entered the SAR; and, ii) proposed provisions to protect set off and netting arrangements in transfers of part of the failed firm's business. The subgroup raised a number of concerns that the Treasury should give regard to when finalising its proposals, such as ensuring that appropriate protection is provided for equitable and common law set off and netting protections.
18. Members noted issues that are inherent in having a regime for firms of different scales and levels of complexity, as well as the different interests of retail and professional clients, and the impacts this has on developing reforms in this space. However, members supported the aim of making transfers easier to carry out in the SAR and members of the subgroup agreed to consider further revised proposals.

#### **AOB – agenda item 6**

19. With much of the upcoming work already discussed at previous BLP meetings, the Treasury suggested it would best to arrange the next BLP meeting in September 2016.