

# Annual report of the Banking Liaison Panel, 2010-2011

23 August 2011

The Treasury has established the Banking Liaison Panel in accordance with section 10 of the Banking Act 2009 ("the Act"). The Panel's function is to provide advice to the Treasury about the effect of the special resolution regime (SRR) established by the Act on banks, persons who do business with banks and financial markets including giving advice to the Treasury on secondary legislation made under the Act and the SRR Code of Practice. The Panel's advice represents the views of non-government stakeholders, and the Treasury facilitates its work. The Panel met for the first time on 7 April 2009.

The Panel meets four times a year, and summary minutes are available to download from the Treasury website. The Panel met on 2 June 2010, 6 September 2010, 2 December 2010, and 3 March 2011.

## Panel members

Under section 10 of the Act, the Panel must include a member appointed by the Treasury, a member appointed by the Bank of England, a member appointed by the Financial Services Authority (FSA), a member appointed by the scheme manager of the Financial Services Compensation Scheme (FSCS), one or more persons who in the Treasury's opinion represent the interests of banks, one or more persons who in the Treasury's opinion have expertise in law relating to the financial systems of the United Kingdom, and one or more persons who in the Treasury's opinion have expertise in insolvency law and practice.

### *Industry members:*

- Peter Beales, Association for Financial Markets in Europe (AFME)
- Roger Brown, British Bankers Association (BBA)
- Catherine Burton, Association of Recovery Professionals (R3)
- Richard Heis, R3 alternate
- Adrian Coles, Building Societies Association (BSA)
- Jeremy Palmer, BSA alternate
- Dorothy Livingston, City of London Law Society (CLLS)
- Michael McKersie, Association of British Insurers (ABI)
- Ed Murray, International Swaps and Derivatives Association (ISDA)
- Guy Sears, Investment Management Association (IMA)
- Joanna Perkins, Financial Markets Law Committee (FMLC)

### *Government members:*

- Nikhil Rathi, HM Treasury
- Emil Levendoglu, HM Treasury alternate
- Peter Brierley, Bank of England
- Alex Kuczynski, FSCS

- James Darbyshire, FSCS alternate
- Tom Crossland, FSA
- Paul Mayo, The Insolvency Service

## **The Panel's work during 2010-2011**

The Panel has given one piece of formal written advice to the Treasury, prepared by the subgroup mandated by the Panel to consider the original Code of Practice issued under section 5 of the Act. The Panel has also given the Treasury advice on other matters related to the SRR, as recorded in the published minutes and summarised below.

### ***Building society insolvency and special administration***

The Treasury made insolvency and special administration rules, drawing on advice given by the Panel in the previous year (2009-2010).

### ***Code of Practice***

At its meeting on 2 June 2010, the Panel agreed and formally gave the written advice on the Code of Practice to the Treasury. A revised Code, incorporating all of the Panel's recommendations in whole or in part, was issued by the Treasury and laid before Parliament on 22 November 2010.

### ***European Commission crisis management proposals***

The Panel discussed the European Commission's crisis management proposals, and their relevance to the SRR at meetings on 2 June, 6 September, including proposals for 'bail-in', which discussed in the Commission's communication *Bank Resolution Funds* (May 2010). The Panel discussed the potential challenges around design, including credibility of the tool, threshold for use, the need for safeguards and protections for creditor rights (including compensation arrangements which would be required for ECHR purposes), provision for respecting the creditor hierarchy, and cross-border challenges.

The Panel also discussed the Commission's proposals for a temporary suspension of close out rights in resolution, and concluded that and that it is be difficult to comment in detail at this stage before details of the proposal were clear.

### ***Amendments to the SRR to be included in the Financial Services Bill***

The Panel considered amendments to the SRR proposed by the Treasury, to be included in the forthcoming Financial Services Bill. The Panel considered these amendments at its meetings on 2 December 2010 and 3 March 2011. The Treasury published draft legislation, including SRR amendments, on 16 June 2011.

The Panel welcomed the Treasury's proposed revision to section 34(7) of the Act, which will remove an area of legal uncertainty by specifying that a property

transfer instrument or order may modify terms of a trust only to the extent necessary or expedient to ensure that a transfer is effective.

The Panel discussed the Treasury's other proposals –

- to require that reports about the operation of a bridge bank or a bank in temporary public ownership (under section 80 and 81 of the Act) must include financial information that gives a true and fair view of the state of affairs of the firm;
- to require the Bank to make a report to the Chancellor of the Exchequer about the exercise of the private sector purchaser tool under section 11 of the Act, to be laid before Parliament;
- to allow property to be transferred back from a private sector purchaser with the PSP's agreement. This power might be used, for example, to remedy the situation where property is inadvertently transferred contrary to the commercial agreement of the parties involved in the resolution; and
- to enable the Treasury to direct a person appointed as a bank administrator to comply with such measures as are necessary for the purposes of assisting the UK in obtaining the approval of the European Commission for any State aid provided in connection with a resolution under the Act.

The Panel did not object to these proposals in principle, and made suggestions for how the measures could be improved.

The Panel considered a further proposal from the Treasury, to place additional requirements on the resolution authorities to manage resolution costs. However on balance the Panel did not support the Treasury's proposed approach seeing the requirements as constraining the Authorities unnecessarily when set against any prospective benefit that might accrue to FSCS levy payers, and the Treasury has decided not to include the proposals in the draft legislation.

### ***Safeguards for partial property transfers***

The Panel continues to consider the 'small companies carve-out' from the set off and netting safeguards established by the safeguards for partial property transfers, and will provide further advice to the Treasury. The Panel notes that 'carved out' liabilities are based on the definition of FSCS eligibility, which comes from the Deposit Guarantee Scheme Directive (DGSD). Any modification to the eligibility criteria in the DGSD could affect the scope of the carve-out.

### **Contact**

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