

The heavyweight

Comprehensive coverage of this month's banking and insolvency law

June 2010

Looking forward

Developments scheduled for the month ahead

Date	Item
July 2010	Single Customer View – formal verification required.
July 2010	European Market Infrastructure Draft Directive expected.
1 July 2010	Revised rules (URDG 758) for demand guarantees come into force.
9 July 2010	Deadline for written views on the first stage of proposals regarding the OFT investment banks market study.
10 July 2010	Deadline for response to EC consultation on possible provisions for stand-alone legislation dealing with potential risks arising from short selling.
10 July 2010	Deadline for response to EC consultation on clearing and risk mitigation of OTC derivatives; requirements for central counterparties; interoperability and reporting obligation and requirements for trade repositories.
10 September 2010	Deadline for response to the review of the Lending Code.
16 September 2010	Deadline for response to consultation paper on the amendments to the guidelines on common reporting.

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Banks

Funding

Funding patterns and liquidity management of internationally active banks

A report outlining changes in the funding and liquidity management of international banks in the light of the global financial crisis. The report also contains the views of a study group chaired by Mario Mesquita of the Central Bank of Brazil, on the possible consequences of greater decentralisation on financial system efficiency and resilience.

<http://www.bis.org/publ/cgfs39.pdf?noframes=1>

Bank for International Settlements CGFS 39, May 2010)

Financial reform

Short selling consultation

The EC are consulting on possible provisions for stand-alone legislation dealing with potential risks arising from short selling. The approach would apply to all persons who engage in short selling whether regulated or unregulated and across all market sectors. The requirements will in most cases apply to the person who enters into the short sale or has a net short position rather than an intermediary executing a transaction for that person. The intention is to harmonise rules across the EU relating to short selling. The consultation briefly alludes to the role of credit default swaps and whether they should be banned in relation to EU sovereign debt issuers. Responses are required by 10 July 2010.

http://ec.europa.eu/internal_market/consultations/docs/2010/short_selling/consultation_paper_en.pdf

Derivatives and market infrastructures consultation

The EC are consulting on clearing and risk mitigation of OTC derivatives; requirements for central counterparties; interoperability and reporting obligation and requirements for trade repositories. Three major pieces of legislation will be used to regulate OTC derivatives markets: MiFID, the Capital Requirements Directive and the new proposals on Market Infrastructures. In the case of Market Infrastructures, the introduction of clearing obligations for eligible OTC derivatives contracts and the regulation of the infrastructures operating in the market (central counterparties and trade repositories) are seen as essential to make OTC derivative markets safer. Since 3rd July 2009, when the Commission adopted a Communication on "Ensuring efficient, safe and sound derivatives markets which set out the problems identified in the OTC derivatives markets and the

possible tools to address these problems, the EC have held consultations, conferences and public hearings to debate the issue. On 25th September 2009, the G-20 leaders agreed that: "All standardised OTC derivatives contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at latest. OTC derivatives contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements". On 20th October 2009, the Commission adopted a second Communication on "Ensuring efficient, safe and sound derivatives markets – Future Policy actions". The Commission is now by this current consultation in the process of finalising its draft legislative proposals. A short, perhaps tellingly so, deadline for responses has been set for 10 July 2010.

http://ec.europa.eu/internal_market/consultations/docs/2010/derivatives/100614_derivatives.pdf

Derivatives markets: future policy actions

European Parliament resolution: More daylight and stricter rules for the derivatives market

This is a link to the resolution by the European Parliament on future policy actions in the area of OTC derivatives.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0206+0+DOC+XML+V0//EN&language=EN>

EP 15 June 2010

Financial stability

The Financial stability review

This European Central Bank report reviews the main risks to the euro area financial system, including concerns about sustainability of public finances persisting or even increasing with an associated crowding-out of private investment. The ECB believes that within the euro financial system, important risks include the possibility of: a setback to the recent recovery of the profitability of large and complex banking groups; vulnerabilities of financial institutions associated with concentrations of lending exposures to commercial property markets; and heightened financial market volatility if macroeconomic outcomes fail to live up to expectations.

<http://www.ecb.int/pub/pdf/other/financialstabilityreview201006en.pdf?c480b73fee2cc8b624a5ec07b9a2af03>

ECB, May 2010

The Future of Banking Commission Report

In December 2009, "Which?" announced the formation of this Commission that "aims to put the wider interests of society at the heart of financial reform and has the support of a number of MPs and industry figures". It undertook to publish a report after the general election with its recommendations and this has now been published. Among its recommendations:

- The introduction of a system of transparent and public living wills which should ensure that within any banking group the core deposit and lending functions and the payment system are ring-fenced. These should also set out how customers would be treated in the event of failure. It suggests that the prudential safety of banks be the responsibility of their board and should not be delegated to regulators. Where a bank is too big, or otherwise too significant to fail, the prudential regulator would intervene to restructure it.
- The compulsory separation of banking activities should be considered urgently by the Government's new commission. The report suggests a separation of investment advice from the execution of trading.
- It suggests that the regulator responsible for consumer protection regulation should have an explicit mandate to promote effective competition in markets in the financial sector; and the necessary powers to regulate the sector to achieve this, including the ability to apply specific licence conditions to banks and exercise competition and consumer protection legislation. These powers would be concurrent with the competition powers of OFT, and will enable the regulator to both enforce competition law and make market investigation references to CC.
- The report says that there needs to be greater independence and professionalism amongst those charged with overseeing their operations and urges the strengthening of corporate governance amongst board directors, shareholders, accountants, auditors and credit rating agencies. It notes concerns with respect to remuneration practices within banks and says that, banks should cease rewarding frontline staff with commission and should instead receive bonuses linked to levels of customer satisfaction, the fair treatment of customers, and resolution of complaints.
- Reform with regard to transparency in securities and derivatives markets.

http://commission.bnbb.org/banking/sites/all/themes/whichfobtheme/pdf/commission_report.pdf

The BBA commented, on the publication of the report, that the banking industry already has under way initiatives that point towards better ways of tackling the underlying problems.

Company

Governance

The UK Corporate Governance Code

The Financial Reporting Council has introduced changes to the UK Corporate Governance Code - formerly known as the Combined Code - to assist company boards to become more effective and more accountable to shareholders. The changes include improvement of risk management, providing that the board should be responsible for determining the nature and extent of the significant risks it is willing to take and that the company's business model should be explained in the annual report, a greater emphasis on the importance of getting the right mix of skills and experience on the board, and a recommendation that all directors of FTSE 350 companies be put up for re-election every year. The new Code applies to accounting periods beginning on or after June 29, 2010 and to all companies with a premium listing of equity shares, regardless of whether they are incorporated in the UK or elsewhere. Companies are required to either follow the code or explain how they promote good governance. The next review of the Code will be in 2013.

<http://www.frc.org.uk/images/uploaded/documents/UK%20Corp%20Gov%20Code%20June%2020101.pdf>

FRC, June 2010

EC Green Paper on corporate governance in financial institutions

Note too that the European Commission has published a Green Paper on corporate governance in financial institutions and remuneration policies. Questions they raise include how to improve the boards supervision of senior management, how to establish a risk culture at all levels of a financial institution in order to ensure that long-term interests of the business are taken into account, how to ensure corporate governance principles are implemented effectively and efficiently and how to change remuneration policies in companies in order to discourage excessive risk-taking.

The Green Paper will be presented at the G20 summit (Toronto) on 26/27 June 2010. Comments can be made on it until 1 September 2010. The Commission has indicated that any future legislative or non-legislative proposals will be adopted in 2011. It has also said that another Green Paper on corporate governance of listed companies will be published in autumn 2010.

http://ec.europa.eu/internal_market/company/docs/modern/com2010_284_en.pdf

2 June 2010

Competition

OFT: investment banks - market study

The Office of Fair Trading has announced its intention of undertaking a market study into the investment banking sector. In its press release, the OFT has stated that its primary concern is the competitive efficiency of equity underwriting and that it is likely to focus on rights issues and other forms of equity-raising by the 350 largest UK public companies.

The OFT expects the formal launch of its market study to take place in the summer. It hopes to conclude the "initial phase" of its work by the end of 2010, although it will confirm the precise scope and timing of the investigation as part of its summer launch. The OFT has invited interested parties to submit written views by 9 July 2010 on its first-stage proposals so that investment banks and other market participants will have an important opportunity to contribute to the development of the OFT's investigation.

More details at:

<http://www.law-now.com/law-now/2010/oftinvestmentbanksmarketstudyjune10.htm>

OFT publishes review of high-cost credit

The OFT has published the final report of its review of the £7.5 billion high-cost credit sector. The sector comprises the pawnbroking, payday loan, home credit and rent-to-buy credit markets. Products supplied in these markets are typically used by people on low incomes who cannot access mainstream credit and who borrow small sums for short periods. The report found that, in a number of respects, these markets work reasonably well in that they serve borrowers not catered for by mainstream suppliers, complaint levels are low, and there is evidence that for some products, lenders do not levy charges on customers who miss payments or make payments late. The report also makes some recommendations for improvements to the functioning of aspects of these markets that work less well.

<http://www.of.gov.uk/news-and-updates/press/2010/63-10>

OFT 15 June 2010

Data Protection

Identity Documents Bill

In the Queen's Speech on 25 May, it was said "Legislation will be brought forward to restore freedoms and civil liberties through the abolition of identity cards and repeal of unnecessary laws." The Bill intends to scrap ID cards and to require the destruction of all personal information gathered from cardholders to cancel the National Identity Register. The main elements of the Bill are:

- The cancellation of all ID cards within one month of Royal Assent;
- Removal of the statutory requirement to issue ID Cards on Royal Assent;
- Cancellation of the National Identity Register.
- Destruction of all data held on the Register within one month of Royal Assent.
- Closing the Office of the Identity Commissioner.
- Re-enactment of certain necessary provisions of the 2006 Act including some criminal offences (possession or use of false identity documents) that are commonly used for identity documents other ID cards.

More detail about the thinking behind this move can be found at:

<http://www.number10.gov.uk/queens-speech/2010/05/queens-speech-identity-documents-bill-50641>

Employment

Bonuses

"The taxation of bankers' bonuses as a human rights issue: a tale of two schemes"

The global financial crisis has seen many a finger pointed critically to remuneration practices in the financial sector. Of the many issues that have attracted public attention since the outbreak of the crisis (with an emphasis on the role of credit rating agencies, the activities of non-harmonised funds and the need for closer supervisory co-ordination and better risk management practices), few have developed into as emotive and politicised an issue as executive remuneration.

P Athanassiou: 2010, JIBLR, 25(6), 275 10.23.015

Insolvency

Bankruptcy petitions - minimum debt

Changes under consideration

The minimum debt that must be owed to a creditor before it may start insolvency proceedings has remained unchanged at £750 since 1986. This sum is now worth less than in 1986 and the Insolvency Service is reconsidering it after no action was taken on a previous consultation in 2006. It is suggested the sum be increased to £1500 (the approximate 'real' value of the 1986 figure at that time). The Insolvency Service wishes to consider the amount of the sum due by taking a broader view of the matter rather than in a simple rebasing of the 1986 figure. Subject to Ministerial approval, they propose to consult on the issue again in the coming months but are first taking soundings from interested parties by invitation.

Participants are being asked questions as to

- Whether the petition debt levels should be changed to level reflecting the increase by inflation, or to a higher level, or reduced or abolished altogether.
- Whether the bankruptcy level should be the same amount as that which applies to the winding up of companies.
- Whether there are lessons to be learned from similar levels in other jurisdictions

There will be a meeting of stakeholders during July and a decision as to further progress will be published in due course.

Lending

Lending Standards Board

This issue of the LSB bulletin notes that changes to the Lending Code will be made following the credit and store card review to develop standards for the operation of current accounts that offer an opt-out from unarranged overdrafts and on how banks should deal with customers who appear to be in financial difficulties. The LSB is reviewing the OFT's "irresponsible lending guidance" and the regulations implementing the Consumer Credit Directive (2008/48/EC) (CCD). Following a review to start shortly (see item below), a new edition of the Lending Code will be launched in March 2011.

<http://www.bankingcode.org.uk/wpdocs/LSB%20Bulletin%20No%202%20june2010.pdf>

Lending Standards Board Bulletin 2 June 2010

Lending Code – review

As noted above, the Lending Standards Board has announced a review of the Lending Code. The Code sets standards of good practice in relation to personal unsecured loans, credit cards and overdrafts and lending to micro-enterprises. The review will be undertaken by Professor Lorne Crerar who will seek comments from all interested stakeholders on the content of the Lending Code. A revised Code will be published in March 2011. Professor Crerar is writing to all major stakeholders to request views on any gaps or deficiencies in the current Lending Code (a link to his letter is below). Responses are required by 10 September 2010.

<http://www.lendingstandardsboard.org.uk/docs/Website%20notice.pdf>

LMA

Coordinating Committee Letters

The LMA have published amended versions of the Coordinating Committee Letters on their website.

18 June 2010 www.lma.eu.com

Syndicated loan case

Raiffeisen Zentralbank Osterreich Ag v Royal Bank Of Scotland Plc

[2010] EWHC 1392 (Comm) QBD (Comm) (Christopher Clarke J) 11/6/2010

In this case, it was held as a matter of fact that the defendant bank had not made the representations on which the claimant bank relied in its claim to recover part of its share of a syndicated loan made to a special purpose vehicle.

Liquidity

Central bank provision

Central bank co-operation and international liquidity in the financial crisis of 2008-9

The financial crisis that began in August 2007 has blurred the sharp distinction between monetary and financial stability. It has also led to a revival of practical central bank co-operation. This paper explains how things have changed. The main innovation in central bank cooperation during this crisis was the emergency provision of international liquidity

through bilateral central bank swap facilities, which have evolved to form interconnected swap networks. We discuss the reasons for establishing swap facilities, relate the probability of a country receiving a swap line in a currency to a measure of currency-specific liquidity shortages based on the BIS international banking statistics, and find a significant relationship in the case of the US dollar, the euro, the yen and the Swiss franc. We also discuss the role and effectiveness of swap lines in relieving currency-specific liquidity shortages, the risks that central banks run in extending swap lines and the limitations to their utility in relieving liquidity pressures. We conclude that the credit crisis is likely to have a lasting effect on the international liquidity policies of governments and central banks.

<http://www.bis.org/publ/work310.pdf?noframes=1>

BIS Working Paper No 310, May 2010

COREP

Consultation paper on the amendments to the guidelines on common reporting

The Committee of European Banking Supervisors has published a consultation paper on amendments to its guidelines on common reporting (COREP). Credit institutions use COREP when reporting their solvency ratio under the Capital Requirements Directive. The review of the COREP framework is driven by Article 74 of the CRD, which requires supervisory authorities to apply uniform formats, frequencies and dates of reporting by 31 December 2012. CEBS requests feedback on its consultation by 16 September 2010.

<http://www.c-ebs.org/documents/Publications/Consultation-papers/2010/CP04rev2/CP04rev2.aspx>

CEBS, 17.6.10

Mortgages

Mortgage Market Review

Update from FSA

The FSA's progress in the Mortgage Market Review was covered in detail in a speech on 16 June 2010 by Lesley Titcomb, Director of Small Firms and Contact Centre at the FSA. She was addressing the Council of Mortgage Lenders' annual mortgage regulation conference. The Review, the FSA says, is "to improve the outcomes for consumers and to help provide the solid foundations for the rebuilding of our mortgage market, so that we end up with a market that's more sustainable for everyone and that works better for

consumers.” In the speech, she discusses the responses on particular topics in the Discussion Paper, including an extension of scope. She notes that the Policy Statement will be published next week, with rules on arrears and that further papers on responsible lending and on distribution and advice will be released in July and “towards the end of the year” respectively.

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2010/0617_lt.shtml

Rectification of the register

Companies House have published FAQs to give guidance on how to apply to the court to rectify the particulars of a charge registered in the statutory register of charges, or to delete an entry made in the Register where a notification of satisfaction of a charge has been made in error.

<http://www.companieshouse.gov.uk/infoAndGuide/faq/chargeRegister.shtml>

Payment systems

Electronic Money Directive

The FSA has published information on the current status of the Directive with regard to the new regime and some Q&As.

<http://www.fsa.gov.uk/Pages/About/What/International/emoney/index.shtml>

Failure to implement the Payment Services Directive

The European Commission has announced it has taken action against Cyprus, Greece, Spain, Poland, Romania and Sweden for failure to implement fully the Payment Services Directive (2007/64/EC) into their national laws. The deadline for member states to implement the Directive was 1 November 2009.

4 June 2010

SEPA Council

Migration end dates and future of SEPA for cards

The EC announced that on 7 June 2010 the SEPA (Single Euro Payments Area) Council met for the first time. The meeting was under the co-chairmanship of the European Commission and the European Central Bank (ECB), the two institutions that have led the

creation of this new body. The main issues discussed were the need and conditions to establish (a) migration end-date(s) for SEPA and the future of a SEPA for payment cards.

<http://www.ecb.europa.eu/press/pr/date/2010/html/pr100607.en.html>

ECB, 07/06/2010

Commentary

“How the EU's payments landscape is developing”

This article comments that in the aftermath of the financial crisis, regulators have turned their attention to introducing stricter rules governing liquidity and capital. However, banks' payments business in Europe has been undergoing its own quiet regulatory revolution for some time now. The key piece of regulation, SEPA (Single Euro Payments Area) aims to revamp the domestic Euro payment infrastructures, and provide a consistent and harmonised framework for payments processing.

F Bar: E-finance & payments law & policy, 05.10, 04 10.24.001

“The Chinese e-payment market: a WTO challenge?”

This article comments that despite agreeing to open up its electronic payments market to international operators in 2006, after joining the World Trade Organisation in 2001, China still has made no move to effectively act upon its commitment. The authors examine how the US is attempting to break up the Chinese payment monopoly by appealing to the WTO to enforce China's initial promise.

M Nicely & M Ludwowski: E-finance & payments law & policy, 05.10, 08 10.24.003

“Virtual currencies: can they classify as property?”

This article comments that the creation of virtual worlds on the internet has also brought about the creation of virtual money, used as a currency to buy and sell goods on these virtual platforms. One of the main issues regarding these 'currencies' is their legal status and the ability for authorities to regulate them. The author examines how virtual money fits in with real world regulation.

A Alleyne: E-finance & payments law & policy, 05.10, 14 10.24.004

Regulation

Basel 3

BBA suggests widening the liquidity buffer in CRD 4

The BBA have discussed with MEPs amendments to a report on future capital requirements legislation to include a wider range of liquid assets. Currently, Basel and EU proposals take a very narrow view of liquid assets, limiting them to government bonds, cash and possibly corporate and covered bonds. The BBA report they have argued that the buffer should be widened to encourage diversification and discourage excessive concentration into one particular asset classes. Thus, a wider spectrum of assets should be considered, for example: covered bonds, corporate bonds, German Pfandbriefe, US Agency Mortgage Backed Securities, gold and equities.

11 June 2010

Basel 2

"Changes to Basel II and the EU capital requirements Directive: implications for securitisation"

This article notes that towards the end of 2008 and into 2009, the Basel Committee and the European Union proposed changes to the securitisation framework in Basel II and the EU Capital Requirements Directive (CRD). Most of the changes have since been adopted and will come into force as from December 31, 2010 or January 1, 2011. The changes include new requirements in respect of originator risk-retention, additional disclosure, investor due-diligence requirements and increased risk weights for re-securitisation.

L Ng: 2010, JIBLR, 25(6), 265 10.23.014

BCOBS

Industry guidance for FSA Banking Conduct of Business Sourcebook

The British Bankers' Association has published an updated version of its industry guidance on compliance with the FSA's Banking Conduct of Business sourcebook. This has been produced jointly with the Building Societies Association and the Payments Council.

The original version of the guidance was published in December 2009. The new banking conduct regime under BCOBS came into force on 1 November 2009.

The changes are the addition of a new section 4.2, on advance notification of a disadvantageous interest rate change, and a small addition to section 5.15.

Compliance with the guidance is not mandatory. However, the guidance has been confirmed by the FSA, which means that if a firm follows the guidance correctly, the FSA will regard the firm as complying with the relevant FSA requirements.

http://www.bba.org.uk/content/1/c6/01/70/36/BCOBS_Industry_Guidance.pdf

BBA / BSA / Payments Council, 27 May 2010

Government plans

The Department for Business, Innovation and Skills has announced its plan to reduce regulation that, it says, is stifling business growth.

- A new “Reducing Regulation Committee” will be formed, chaired by the Business Secretary, to plan how to reduce regulation. The first thing they will do is review all regulation in the pipeline for implementation that has been inherited from the last Government.
- A team will be formed with a brief to develop innovative approaches to achieving social and environmental goals in a non-regulatory way.
- A new approach (“one-in, one-out”) will be devised that will control and reduce the burden of regulation. The aim of this is to make sure that new regulatory burdens on business are only brought in when reductions can be made to existing regulation.

Compare an extract from the speech made by Business Secretary, Vince Cable, on 3 June 2010 at the CASS Business School:

“So as part of the coalition I have three big priorities here.

- First – the question of structural reform - separating retail and investment banking, which we will address through the Banking Commission whose membership and terms of reference will be announced shortly.
- “Second - the question of a levy on the banks to reflect the fact that – at least until banks are made safe through structural reform – the taxpayer is providing insurance: protection for which the banks should pay.
- “And third – perhaps most important for early economic recovery, I will redouble our efforts to ensure that bank lending agreements from banks that have benefited from taxpayer subsidy are being honoured – especially for SMEs. We do not expect to see viable businesses deprived of credit or working capital by banks that are largely owned by the taxpayer, or the general beneficiaries of wider public support.”

Business Secretary, Vince Cable, CASS Business School 3 June 2010

Credit rating agencies

CESR Guidance

CESR has published two sets of guidance on the current CRA regulation that will be applicable from Monday 7 June. In addition, it has published a feedback statement on the consultation held to develop the guidance on registration, as well as an updated Q&A.

http://www.cesr-eu.org/index.php?page=home_details&id=483

“Credit-rating agencies and the financial crisis: less regulation of CRAs is a better response”

This article comments that when the histories are written of the US sub prime residential mortgage debacle of 2007-2008, and the world financial crisis that followed, the three large US-based credit-rating agencies--Moody's, Standard & Poor's and Fitch--will be seen as central parties to the debacle; and rightly so. Their initially favourable ratings on the bonds that were securitised from sub prime residential mortgages and other debt obligations were crucial for the successful sale of these bonds to various categories of institutional investors. In turn, the sale of these bonds provided an important underpinning for the US housing boom of 1998-2006 and the self-reinforcing housing price bubble.

L J White: 2010, JBLR, 25(4), 170 10.23.016

Cross-border

“Legislative, regulatory and governance reforms in financial regulation: reflections on the global financial crisis”

This article outlines briefly some of the reforms proposed in the EU, US and UK to the legislative framework, regulatory system and internal governance of banking. It urges reformers in each of the three fields to consider the interaction of reforms in one area with the other areas.

I Chiu: [2010] 31(6) Co Law 165

Retail

EC study

“Tying and other potentially unfair commercial practices in the Retail Financial Service Sector”

The EC have published this summary of replies they received to their Study into tying and other potentially unfair commercial practices in the retail financial service sector (published 15 January 2010). Tying is the practice whereby two or more products are sold together in a package, e.g. a mortgage and life insurance and at least one of these products is not sold separately. Bundling on the other hand is selling two or more products together although each of them can also be purchased separately. The consultation is the start of the EC’s evidence-gathering process in this area. Further discussions with stakeholders will follow before assessing the need for policy action.

http://ec.europa.eu/internal_market/financeservices-retail/docs/tying/summary_responses_en.pdf

Financial Ombudsman

“Ombudsman News 86”

The Financial Ombudsman Service have issued their latest newsletter. Topics include: common misunderstandings under s75 CCA; recent recession-related insurance cases and the new arrangements covering the way FOS liaises formally with the financial services industry.

<http://www.financial-ombudsman.org.uk/publications/ombudsman-news/86/86.pdf>

Financial Services Compensation Scheme

Pre-implementation report template for non electronic SCV

The FSCS has prepared this template following requests received from deposit takers and trade bodies. It is designed for use by firms that are not subject to the electronic SCV requirements. Use of this template is voluntary.

http://www.fscs.org.uk/uploaded_files/SCV/pir_for_non_electronic_scv.doc

Mental Capacity

Mental capacity guidance for creditors

The Office of Fair Trading has announced that it will develop guidance as to “mental capacity” for creditors. The OFT identified a need to consider the issue of mental capacity as it impacts on borrowing decisions, with a view to providing guidance for creditors during its consultation last year on irresponsible lending guidance

In creating the guidance, the OFT plans to consider:

- The legal responsibilities creditors have under mental capacity legislation, and its overlap with equality and discrimination law. It will also consider how these responsibilities sit alongside creditors' consumer credit responsibilities.
- The "triggers" that might help creditors to assess whether or not a prospective borrower may reasonably be believed to lack mental capacity.
- The "reasonable adjustments" creditors need to make to optimise the likelihood that informed consent can be given by the customer, and the implications of these "adjustments" for prospective borrowers and creditors' processes.
- The process that might be put in place by a creditor if it does not believe that a prospective borrower has the capacity to make a borrowing decision.
- The processes that might be put in place by a creditor to deal with a prospective borrower who discloses that they have mental capacity issues.

The OFT anticipates publishing a consultation document towards the end of summer 2010. If you would like to contribute to any of the stakeholder discussions in June, you are invited by the OFT to contact Debbie Samosa (debbie.samosa@oft.gsi.gov.uk).

<http://www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/mental-capacity-guidance/>

Saving Gateway

The Saving Gateway Accounts Act 2009 (Revocation of Commencement) Order 2010

In the budget on 22 June, the government announced that they would not be carrying on with the Saving Gateway scheme. This Order revokes the Saving Gateway Accounts Act 2009 (Commencement No. 2) Order 2010 (S.I. 2010/921). This latter Order would have brought the substantive provisions of the Saving Gateway Accounts Act 2009 into force from 1st July 2010.

http://www.opsi.gov.uk/si/si2010/pdf/uksi_20101640_en.pdf

Date made: (22.6.10)

Security

Destiny 1 Ltd v Lloyds TSB Bank Plc

[2010] EWHC 1233 (QB) QBD (Judge Richard Seymour QC) 15/6/2010

A letter from a bank concerning its proposed provision of a guarantee did not by itself form a contract which had been breached by the bank as the letter formed part of a package of transactions and, at that time, neither party to the proposed transactions had thought that component parts of that package might be agreed in separate contracts.

Trade Finance

Demand guarantees

A reminder that revised ICC rules for demand guarantees came into force on 1 July 2010. The International Chamber of Commerce Uniform Rules for Demand Guarantees 2010 Revision, ICC Publication No. 758 (URDG 758) will supersede the current version of the URDG, ICC Publication No. 458.



Editor: Ruth Pedley, Client Counsel, CMS Cameron McKenna LLP. Please contact Ruth for further information or feedback on this bulletin: Ruth.Pedley@cms-cmck.com

020 7367 2098

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CMS Cameron McKenna LLP
Mitre House
160 Aldersgate Street
London EC1A 4DD

T +44 (0)20 7367 3000
F +44 (0)20 7367 2000

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