



The Quoted  
Companies Alliance

QCA Legal Committee

Minutes of the meeting held on: Thursday 27 January 2011 at 8:45am

Speechly Bircham LLP, 6 New Street Square, London EC4A 3LX

<b>Present:</b>	Tom Shaw (in the Chair)	TS
	Donald Stewart	DS
	Richard Beavan	RB
	Ross Bryson	RBr
	Susan Hollingdale (Head of PLC Corporate)	SH
	Gary Thorpe	GT
	James Archibald	JA
<b>In attendance:</b>	Mark Turner (Department of Business, Innovation and Skills)	MT
	Edward Craft, Wedlake Bell LLP	EC
	Simon Redfern	SR
	David Hicks	DH
	Paul Arathoon	PA
	Jaspal Sekhon (Minutes)	JS

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**ACTIONS**

**1. Discussion with Mark Turner from BIS**

TS thanked MT for coming along to the meeting. MT is the Head of Access to Finance Policy at BIS and he was here to discuss the work being undertaken by BIS as part of the Government's business finance initiative.

MT said BIS is busy reviewing a number of policy issues and there will be several measures announced between now and up to the 2011 Budget. For example, the same morning BIS announced measures to reform employment laws.

The general "Growth Review" is not now happening but some focussed growth reviews are being undertaken in specific sectors (e.g. film and music) and areas (e.g. access to finance and tax).

On the previous day, MT and Mark Prisk MP, the Minister of State for Business and Enterprise, attended two meetings with the business angel community. The key concerns raised in the meetings included:

- Employment tribunal claims (and particularly the problem this causes to growth companies).
- Entrepreneurial visas.
- The Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCT), in particular the opening up of EIS relief.

MT reported that 480 bids had been received to participate in the Regional Growth Fund (RGF), a new £1.4bn fund that will operate across England to stimulate private sector led growth and employment. MT explained that the RGF was different from the £1.5bn Business Growth Fund (BGF) which is being led by the major UK banks. MT said that, although he was not involved in the BGF, he was aware that there have been issues with staffing the BGF and the level of support of the banks (e.g. the banks are only

committing £150m per year). MT said the Government was actively encouraging business angel involvement in the RGF. Now that the bids are in, they will be assessed by Michael Heseltine.

In the area of business support, MT said that the Business Link support service scheme is considered to be too generic and not sufficiently targeted. Instead, BIS will aim to offer more services online. In addition, BIS will offer a face to face service, Business Coaching for Growth (BCG), which will be delivered via local business hubs. BCG will be aimed at backing high growth SMEs by providing tailored mentoring through a network of mentors.

MT said that changes to FSMA and MIFID are on the agenda and will be lead by the Treasury. One of the areas is possibly to extend financial promotion exemptions.

On the Bribery Act 2010, MT said the Government is looking at this, particularly in the area of guidance. MT admitted that there is little scope in stopping the act from coming into force.

MT was asked about the early implementation of the increased thresholds for exempt offers and limited investors under the amended Prospectus Directive. MT said this is being led by the Treasury and there will likely be an announcement in February.

TS noted that the existing statutory pre-emption provisions will cut across any new proportionate disclosure regime as companies will not be able to benefit from reduced disclosure unless they have not disapplied pre-emption rights which will be difficult in practice. MT offered to put TS in touch with his colleagues at the Better Regulation Department. DS noted the problem is that statutory pre-emption provisions are derived from the Second Company Law Directive and so there will be little or no scope to remove or vary the existing provisions.

DS said that any extension to the EIS scheme should not be at the expense of VCT, which is valued by many investors.

MT was asked to what extent quoted companies (QCs) featured on BIS's radar. MT said it is something BIS struggles with. Clearly there need to be liquid markets available as the next viable stage for SMEs and growth companies. BIS aims to set up a regional framework to provide support at the sub-listed stage.

TS thanked MT again for attending and MT left the meeting.

## **2. European Contract Law (Edward Craft)**

TS introduced EC from Wedlake Bell who has been involved in preparing the Law Society's response to the Commission Green Paper on policy options for progress towards a European Contract Law for consumers and businesses.

EC explained the background to the Commission's green paper on introducing a new European contract law for consumer and businesses. The Commission wants to harmonise contract law by creating an "optional instrument" for cross-border transactions. The instrument will be not be based on the law of any Member State and, accordingly, would require the introduction of a new optional 28<sup>th</sup> regime. The Commission's rationale for the project is that SMEs do not grow because they cannot trade cross-border, particularly online. The consultation period for responding to the Green Paper closes on 31 January 2011.

EC went to Brussels two weeks ago to meet a number of MEPs involved in the European Contract Law project including Diane Wallace. EC also spoke about the Law Society's response (which was circulated to the Committee in advance of the meeting). The Law Society had suggested a standard form of terms and conditions as opposed to a separate law. The Law Society also highlighted the problems of there being no jurisprudence to support a new 28<sup>th</sup> regime which would lead to enforcement issues.

The Commission had intended to introduce the new law (comprising 150 articles) by November 2011 but the European Parliament has slowed the process down by insisting on scrutinising the proposed legislation.

The Federation of Small Businesses and the Scottish Law Society support the proposals.

EC reported that the issues highlighted to the MEPs in their meetings were:

- If the new measures are to be introduced they would need very clearly defined terms.
- If the measures are to be optional, then they really do need to be optional.

### **3. Apologies**

Apologies were received from Kate Jalbert, Tim Ward, Jeanette Gregson, Philip Lamb, Madeleine Cordes, June Paddock, Jonathon Deverill, Jai Bai, Matt Bonass, Rebecca Ferguson, Carol Kilgore, Chris Owen and Chris Barrett.

TS introduced SH to the committee and thanked her for joining the group.

### **4. Approve the minutes of the previous meeting (25 November 2010)**

The minutes of the last meeting were approved.

### **5. Prospectus Directive Working Group**

TS has seen the latest draft submissions and thought we should all have another look at the document and asked all attendees to provide any suggestions/comments (i.e. as opposed to redrafting the text) by 18 February so that they can be incorporated into a revised draft in time for the next Committee meeting.

**All**

TS raised the tactical issue about whether the PDWG should join forces with other groups (e.g. EuropeanIssuers). DS said the EuropeanIssuers tend to focus on bigger issuers but some of the proposals are likely to gain support.

### **6. Consultation Update**

- **MIFID**:

DS referred to the proposed changes to MIFID and highlighted the following issues with the proposals:

- The categorisation of clients. Currently retail investors can buy and sell securities without advice for non-complex investments (e.g. AIM and PLUS are non-complex). However, there is a proposal to require retail investors to take advice.
- The proposal to create a distinction in multilateral trading facilities (MTFs) between internal MTFs used by global investment banks and growth markets (e.g. AIM and PLUS) and create a category of markets known as 'SME markets'.
- The problem of smaller companies funding research which is deemed to be a financial promotion as it is not "independent".
- **Bribery Act – Update**: This was not discussed
- **Government's Growth Review (BIS)**: This was discussed in Section 1 of the minutes.

7. Current Issues/Communications:

- **Guest Invitations:**

The Committee suggested future guest attendees could include representatives from:

- Serious Fraud Office / Ministry of Justice to discuss the Bribery Act.
- Takeover Panel.
- FSA.
- Mark Turner again.

**8. Date of Next Meeting**

Thursday 3 March 2011 at 8:45am (Venue: Speechly Bircham LLP) – **CANCELLED**

Thursday 31 March 2011 at 8:45am (Venue: Speechly Bircham LLP)

**9. Actions**

<b>Action</b>	<b>Person</b>	<b>Timing</b>
Table matters set out in section 5 for next meeting	KJ/TW/SR	Next meeting
Review the latest draft of the PDWG proposals and provide comments/suggestions to TS	All	By 18 February