

THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 303rd meeting
at 9:00 a.m. on 20th May 2020

1. **Welcome and apologies**

Attending: David Pudge (Chairman), John Adebayi, Mark Austin, Sam Bagot, Adam Bogdanor, Edward Baker, Robert Boyle, Murray Cox, Lucy Fergusson, Nicholas Holmes, Chris Horton, Vanessa Knapp, Stephen Mathews, Jon Perry, Caroline Rae, Patrick Sarch, Richard Spedding, Patrick Speller, Liz Wall, Martin Webster, Richard Ufland, Victoria Younghusband, Gillian Fairfield, Kathy MacDonald and Kath Roberts (Secretary).

2. **Approval of minutes**

The Chairman reported that a draft version of the minutes of the meeting held on 25 March 2020 was circulated to members on 7 May 2020 and asked members to send any comments on the minutes to the Secretary by 31 May 2020.

3. **Matters arising**

- 3.1 *FCA Quarterly Consultation Paper No. 26.* The Chairman reported that on 27 March 2020, the FCA published Handbook Notice No 75 which includes a summary of its response to feedback received on the proposed changes to the Listing Rules set out in Chapters 3 and 4 of FCA Quarterly Consultation Paper No. 26. It was noted that these changes have been made by Listing Rules (Contents of Circulars) (Amendment) Instrument 2020 (FCA 2020/13) and Listing Rules (Disclosure of Rights of Securities) Instrument 2020 (FCA 2020/14), which both came into force on 27 April 2020. The Committee welcomed, in particular, those changes that mean that, in connection with a class 1 transaction, issuers are no longer required to make a copy of any sale and purchase agreement available for inspection on their website. It was noted however that, during the current "lockdown" due to the COVID-19 situation, where a copy of the agreement could not be made available for physical inspection then the FCA did expect it to be made available electronically but had accepted, on a recent transaction, that this could be only upon request rather than by way of being generally available for inspection on the issuer's website.
- 3.2 *FRC update on its transformational strategy.* The Chairman reported that on 1 May 2020, the FRC published an update on its progress towards becoming the Audit Reporting and Governance Authority by taking forward work on the recommendations of the Independent Review of the FRC, The Competition and Markets Authority (CMA) review and Sir Donald Brydon's review into the quality and effectiveness of audit. It was noted that the update provides some details about

the progress made so far and the expected next steps and that the FRC's combined "Transformation Programme" comprises of six workstreams that will drive the FRC's delivery of the recommendations across all three reviews as one holistic programme.

- 3.3 *FRC Strategy 2020/21*. The Committee noted that on 23 March 2020, the FRC issued a press release on its 2020/21 strategy for reform, in which it stated that it is promoting a more resilient audit market and will develop its longer term strategy once the Government has finalised its position on key public policy issues related to the audit market. It was also noted that the FRC states it has a new purpose - serving the public interest by setting high standards of corporate governance, reporting and audit and by holding to account those responsible for delivering them and to meet this its core objectives are: (i) to set high standards in corporate governance and stewardship, corporate reporting, audit and actuarial work and assess the effectiveness of the application of those standards, enforcing them proportionally where it is in the public interest; (ii) to promote improvements and innovation in these areas, exploring good practice with a wide range of stakeholders; and (iii) to transform the organisation into a fit-for-purpose, independent regulator.

4. **Discussions**

- 4.1 *FCA announces measures to help companies raise new funding*. The Committee noted that on 8 April 2020, the FCA issued a press release announcing a series of measures to help listed companies to raise new funding while retaining an appropriate degree of investor protection. It was also noted that the measures, set out in the FCA's statement of policy on listed companies and recapitalisation issuances during the coronavirus crisis, include: (i) an endorsement of the Pre-Emption Group's recommendation set out in item 4.3; (ii) advice to issuers to consider the use of simplified prospectuses (as permitted under the changes to the prospectus regime introduced in July 2019) where they are required to prepare a prospectus as part of any recapitalisation issue; (iii) providing clarity on the FCA's expectations about the due diligence supporting 'working capital statements' in share prospectuses and shareholder circulars given the significant economic uncertainties caused by coronavirus; and (iv) temporary modifications to the Listing Rules on a case by case basis in relation to Class 1 and related party transactions, enabling issuers to apply to the FCA for a waiver from the requirement to hold a general meeting, where a sufficient level of shareholder commitments in favour of approving the relevant transaction can be obtained.

Victoria Younghusband provided feedback to the Committee on the discussions with the FCA on a call on 16 April 2020 regarding additional suggestions raised with them to assist in equity capital raisings which the FCA was not intending to progress.

- 4.2 *FCA Dear CEO letter on ensuring fair treatment of corporate customers preparing to raise equity finance*. The Chairman reported that on 28 April 2020, the FCA published a Dear CEO letter on ensuring the fair treatment of corporate customers preparing to raise equity finance in which the FCA refers to reports that banks may have used their lending relationship to exert pressure on corporate clients to secure roles on equity mandates that the issuer would not otherwise appoint them to, and such conduct could be a breach of FCA rules and principles.

- 4.3 *Pre-Emption Group expectations for issuances in the current circumstances.* The Chairman reported that on 1 April 2020, the Pre-Emption Group released a statement recommending investors consider, on a case-by-case basis, supporting issuances by companies of up to 20% of their issued share capital on a temporary basis until 30 September 2020.

The Committee discussed the concerns that have been raised about the exclusion of retail shareholders from large placings. It was noted that on the recent Compass Group plc placing (May 2020) that Compass included a retail element which was facilitated by a company called PrimaryBid, which is backed by the London Stock Exchange. The Compass placing comprised of an £2bn institutional placing and a separate retail offer of not more than EUR 8 million (in order that it is an exempt offer for the purposes of the Prospectus Regulation).

- 4.4 *Coronavirus and AGMs.* It was noted that on 27 March 2020, the FRC and ICSA published updated guidance about company AGMs and the impact of Covid-19, which provides advice on how listed companies might implement contingency plans for holding AGMs in light of the UK Government lockdown measures. It was further noted that on 28 March 2020, the Government announced in a press release that it will introduce legislation to enable companies to hold AGMs in a way that is consistent with the lockdown measures. Committee members noted that on 17 April 2020, the FRC published a Q&A on measures in respect of company filings, AGMs and other general meetings during Covid-19 that it prepared with BEIS. The Chairman reported that BEIS had indicated that the Corporate Insolvency and Governance Bill would be published very shortly.

The Chairman also drew the Committee's attention to the Irish High Court's recent refusal to grant an injunction to stop Grafton Group plc's AGM being held behind closed doors (noting that the shareholder who sought the injunction argued that the meeting could have been held as late as 7 August 2020 and that proceeding with the meeting behind closed doors on 29 April 2020 breached shareholders' rights under the Irish Companies Act).

- 4.5 *ICSA guidance note on withdrawal or amendment of dividend resolution.* The Committee noted that on 29 April 2020, ICSA published a guidance note on the withdrawal or amendment of a dividend resolution put to shareholders for approval at the Annual General Meeting.
- 4.6 *Coronavirus and wrongful trading/insolvency regime.* The Committee noted the announcement by BEIS on 28 March 2020, that it will temporarily suspend wrongful trading provisions retrospectively from 1 March 2020 for three months for company directors so they can keep their businesses going without the threat of personal liability. It was noted that BEIS also announced that it will amend the UK's insolvency framework to add new restructuring tools, including: (i) a moratorium for companies giving them breathing space from creditors enforcing their debts for a period of time whilst they seek a rescue or restructure; (ii) protection of companies' supplies to enable them to continue trading during the moratorium; and (iii) a new restructuring plan, binding creditors to that plan. It was further noted that on 23 April 2020, BEIS announced further measures in relation to a temporary ban on the use of statutory demands (made between 1 March 2020 and 30 June 2020) and winding up petitions (presented from 27 April 2020 to 30 June 2020), in each case where a

company cannot pay its bills due to coronavirus. It was reported that these measures are to be included in the Corporate Insolvency and Governance Bill expected to be published very shortly.

- 4.7 *Moss Bros Group PLC scheme of arrangement.* The Chairman reported that on 22 April 2020, Moss Bros Group PLC announced that Brigadier Acquisition Company Limited (**Bidco**) was seeking a ruling from the Takeover Panel (**Panel**) to enable Bidco to invoke a condition to lapse the scheme of arrangement on account of the impact of the Covid-19 pandemic on Moss Bro. It was noted that on 23 April 2020, Moss Bros announced that there would be no change to the offer timetable in response to the ruling sought by Bidco as the Panel would likely need longer to consider its ruling and that the Panel had informed Moss Bros that the process of considering Bidco's request and Moss Bros' rebuttal was unlikely to be concluded prior to 29 April 2020, which was the scheduled date for the Court Meeting and General Meeting. It was further noted that the scheme was approved by the shareholders (as announced on 29 April 2020).

The Committee noted that on 19 May 2020 the Panel rejected Bidcos' request to invoke a condition to lapse the scheme.

The Committee also noted a case brought by Metlifecare in the New Zealand High Court where it has filed a statement of claim seeking orders that Asia Pacific Village Group Limited (APVG) be required to fulfil its contractual obligations under a scheme implementation agreement entered into on 29 December 2019. Metlifecare filed the statement of claim on 15 May 2020, challenging the validity of APVG's notice to terminate the agreement. The statement sets out the reasons why Metlifecare considers there is no lawful basis to terminate the agreement, on the basis that no material adverse change has occurred and that, as such, there have been no prescribed occurrences that would permit APVG to terminate the agreement. The Committee agreed it was important to track the progress of this case given that more counterparties may seek to trigger MAC clauses on M&A related deals as a result of COVID-19 related circumstances.

- 4.8 *BEIS Committee follow-up inquiry on audit reform.* The Committee noted that on 20 March 2020, the BEIS Committee launched an inquiry on delivering audit reform to help map out a path for implementing meaningful reform of the UK's audit industry following a series of inquiries from the BEIS Committee, the CMA, Sir Donald Brydon and Sir John Kingman. The Chairman reported that in this follow-up inquiry, the BEIS Committee intends to take oral evidence later this year from stakeholders on their response to the various audit reviews and examine how they can fit together to deliver reform to the UK's audit industry and that the call for evidence closes on 31 July 2020.

The Committee was in agreement that it was important to respond to this call for evidence. Vanessa Knapp agreed to review the Committee's previous submissions in relation to the earlier BEIS Committee, Brydon and Kingman inquiries and to prepare a draft response re-iterating the key concerns raised by the Committee.

- 4.9 *Law Society position on the use of virtual execution and e-signature.* The Chairman reported that on 7 May 2020, the Law Society published a guidance note on its position on the use of virtual execution and e-signature during the coronavirus

pandemic. It was noted that in particular the note contains links to the Law Society's practice notes on: (i) execution of documents by virtual means (issued on 16 February 2010), which remains in the form issued on 16 February 2010; and (ii) execution of a document using an electronic signature (issued on 21 July 2016), which, save for certain updated references, remains in the form issued on 21 July 2016 (noting that both practice notes are stated to have been reviewed in May 2020 in the context of COVID-19 restrictions). It was also reported that on 6 May 2020, the Law Society published an article on HM Land Registry changes to property transactions during coronavirus, including HM Land Registry temporarily accepting the 'Mercury' signing approach for deeds in relation to conveyancing.

- 4.10 *Brexit*. The Chairman called the Committee's attention to item 5.5(a) of the agenda - Regulation 2019/2155 which was published in the Official Journal in December 2019 and which, inter alia, amends Articles 18 and 19 of MAR with effect from 1 January 2021. It was noted that it is currently unclear whether these changes will be implemented in the UK given that they take effect after the end of the transition period.
- 4.11 *Notification under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs)*. The Chairman referred to the email circulated to the Committee for its consideration on behalf of Traver Smith Braithwaite in relation to the provisions of Article 43(4) of the MLRs. The Chairman reported that this article requires all UK bodies corporate (excluding those listed on a regulated market) to notify 'relevant persons' during the course of a business relationship of changes to prescribed information (include changes to, amongst other things, the UK body corporate's registered office, board of directors, senior persons responsible for its operations, legal owners and beneficial owners) and the date on which those changes occurred within 14 days of the date on which the corporate becomes aware of the change. It was noted that a failure by a relevant body corporate to notify under this regulation is a criminal offence. It was noted that UK bodies corporate would typically have a number of business relationships with, for example, credit institutions, financial institutions, lawyers, accountants, tax advisors, auditors and estate agents (all of whom would fall within the definition of 'relevant persons'). The Committee had been asked to seek views from their respective compliance teams as to whether UK bodies corporate are generally complying with this obligation.

A number of Committee members reported that they had spoken to their compliance teams who did not appear to routinely receive notifications of this sort suggesting that UK bodies corporate are potentially unaware of or do not have systems in place designed to secure compliance with this obligation. The Committee considered how best to raise this issue more widely. The Chairman agreed to raise this concern with The Chartered Governance Institute to ask whether they can raise awareness of this obligation with their members.

5. **Recent developments**

The Committee noted the following additional items in sections 5.1 to 5.9 below which were set out in the agenda but which time did not allow them to consider.

5.1 Company law

- (a) *Temporary measures concerning general meetings of SEs and SCEs in light of coronavirus.* On 29 April 2020, the European Commission published a proposal for a Council Regulation on temporary measures concerning the general meetings of European Companies (**SEs**) and European Cooperative Societies (**SCEs**). The proposal sets out a temporary derogation to the deadline by which SEs and SCEs must hold their general meetings under the applicable EU Regulations (i.e. within six months of the end of their financial year) by allowing SEs and SCEs to hold their general meetings within 12 months of the end of their financial year, but in any case no later than 31 December 2020.
- (b) *ICSA guidance on virtual board meetings.* On 28 March 2020, ICSA published guidance on good practice for virtual board and committee meetings. The purpose of the guidance is to offer a brief guide to the practical and legal issues that need consideration and to offer insight into how virtual meetings can be made as effective as possible.
- (c) *Companies to receive three-month extension period to file accounts.* On 25 March 2020, BEIS and Companies House issued a press release announcing that companies will be able to apply for a three-month extension for filing their accounts due to the coronavirus outbreak. On 25 March 2020, Companies House also updated its guidance on applying for more time to file company accounts to provide that where accounts will be late because of the impact of coronavirus on the company and the filing deadline has not yet passed, the company can apply for an automatic and immediate three-month extension to file accounts. However, companies that have already extended their filing deadline, or shortened their accounting reference period, may not be eligible for an extension.
- (d) *Updated Companies House coronavirus guidance.* Companies House has updated its coronavirus guidance since the last Committee meeting, including to advise that: (i) applications covering sections 243, 790ZF and 790ZG of the Companies Act 2006 (**CA 2006**) (in relation to the disclosure of personal information) should be made online; (ii) the quickest way to ensure an SR01 application (where an individual applies to make an address unavailable for public inspection pursuant to section 1088 CA 2006) is processed is to send a digital copy via email; (iii) due to the HMRC's temporary stamp duty measures (see item 5.8(e)), Companies House will accept and register: (a) an unstamped SH03 form for notifying a share buyback if it is accompanied by the letter from HMRC confirming that the correct duty has been paid; and (b) court orders sanctioning schemes of arrangement which are accompanied by either the letter from HMRC confirming that the correct duty has been paid or a letter from HMRC confirming that no duty is payable (note, in each case, the letter will not appear on the public register); (iv) for a temporary period, it will ease strike off activity and treat late filing penalty appeals sympathetically; and (v) the emergency filing service can be used to file registrar's powers forms e.g. application for rectification by the registrar of companies (RP02A and LL RP02A), application to remove material about a director (RP06).

5.2 Corporate governance

- (a) *Updates to the 2018 Guidance on the Strategic Report.* On 11 May 2020, the FRC published editorial amendments to Appendix II and Appendix III of the 2018 Guidance on the Strategic Report, along with an explanation of the amendments. The amendments include a clarification that a public company must include a section 172(1) statement in its Strategic Report, even if it meets the medium sized company size criteria.
- (b) *IA outlines shareholder expectations on executive pay in light of coronavirus.* On 27 April 2020, the Investment Association (**IA**) issued a press release announcing the publication of guidance to companies on shareholder expectations on executive pay in light of coronavirus.
- (c) *ICGN open letter on corporate governance in light of coronavirus.* On 23 April 2020, the International Corporate Governance Network (**ICGN**) issued a press release announcing the publication of an open letter to companies, regulators and stakeholders setting out governance priorities during the coronavirus pandemic and beyond. The press release states that ICGN is seeking to advance an international dialogue among investors and companies around effective responses to the pandemic while looking to restore and rebuild a more sustainable global economy.
- (d) *ISS policy application guidance in light of coronavirus.* On 8 April 2020, Institutional Shareholder Services Inc. (**ISS**) issued a press release announcing the publication of guidance on the application of its policies in light of coronavirus. The guidance addresses how ISS plans to apply ISS' benchmark proxy voting policies over the coming months.
- (e) *PIRC Shareholder Voting Guidelines 2020.* In March 2020, PIRC published its yearly Shareholder Voting Guidelines 2020 for the various markets that it covers. The guidelines set out PIRC's views on issues such as board structure, remuneration policy and management of social and environmental issues. A copy can be ordered for £375.

5.3 Reporting and disclosure

- (a) *ESMA guidance on financial reporting deadlines in light of coronavirus.* On 27 March 2020, ESMA issued a press release with a link to a Public Statement on the implications of coronavirus on the deadlines for publishing financial reports which apply to listed issuers under the Transparency Directive. The statement acknowledges the difficulties encountered by issuers in preparing financial reports and the challenges faced by auditors in carrying out timely audits of accounts due to coronavirus, which may impair the ability of issuers to publish within the legislative deadlines. The statement recommends National Competent Authorities to apply forbearance powers towards issuers who need to delay publication of financial reports beyond the statutory deadline, whilst highlighting that issuers should keep their investors informed of the expected publication delay and that requirements under MAR still apply.

- (b) *FCA, FRC and PRA joint statement on coronavirus.* On 26 March 2020, the FCA, FRC and PRA issued a joint statement (see also the FRC press release) announcing a series of actions to ensure information continues to flow to investors and support the continued functioning of the UK's capital markets. These actions include: (i) an FCA statement of policy that allows listed companies an extra two months to publish their audited annual financial reports; (ii) FRC guidance for companies preparing financial statements (which also includes guidance on corporate governance and reporting; this guidance was amended on 12 May 2020 to include information on interim results); and (iii) an FRC bulletin for auditors covering factors to be taken into account when carrying out audits during the coronavirus crisis. On 26 March 2020, the London Stock Exchange (**LSE**) issued a Market Notice N08/20 in which it states that it supports the joint statement of the FCA, FRC and PRA.

5.4 **Equity capital markets**

- (a) *Update to PMB No. 27.* On 20 April 2020, the FCA updated the "Shareholder meetings" and "Corporate transactions and admissions" sections of Primary Market Bulletin No. 27 (which was first published on 17 March 2020) to take account of the FCA statement of policy published on 8 April 2020 and accompanying technical supplements (see item 4.1).
- (b) *New Q&A on APMs in the context of coronavirus.* On 17 April 2020, ESMA issued a press release announcing the publication of a new Q&A to provide guidance to issuers on the application of the ESMA Guidelines on Alternative Performance Measures (**APMs**) in the context of coronavirus. The new Q&A encourages issuers to use caution when adjusting APMs and when including new APMs to address the impact of coronavirus and invites issuers to provide narrative information regarding the modifications made, the assumptions used and the impact of coronavirus and information on measures taken or expected to be taken by issuers to address the impact that coronavirus may have on their operations and performance.
- (c) *IA letter to FTSE 350 Chairs.* On 8 April 2020, the IA issued a press release stating that it has, on behalf of the UK's investment management industry, written a letter to the Chairs of all FTSE 350 companies, expressing the industry's commitment to supporting British business during the coronavirus outbreak. On 1 April 2020, the IA also published statements on dividends and executive pay in the current climate.
- (d) *Temporary changes to Dividend Procedure Timetable due to coronavirus.* On 25 March 2020, the LSE issued Market Notice N07/20 that provides issuers with guidance in respect of payment dates under the Dividend Procedure Timetable in light of coronavirus. The Market Notice states that the LSE will permit a deferral period of up to 30 business days for payment of a dividend, but no more than 60 business days after the record date.
- (e) *FCA moratorium on the publication of preliminary financial statements.* On 21 March 2020, the FCA issued a press release strongly requesting that all listed companies observe a moratorium on the publication of preliminary financial statements for at least two weeks. The FCA also published a Q&A

on this moratorium. On 23 March 2020, the FRC issued a press release stating that it fully supports the FCA's request. On 26 March 2020, the FCA announced that the moratorium could end on 5 April 2020.

- (f) *Inside AIM - Temporary measures due to coronavirus.* On 20 March 2020, the LSE published an Inside AIM that sets out temporary measures implemented by AIM Regulation to support AIM companies and nominated advisers during the coronavirus outbreak. This Inside AIM states that, until further notice, AIM Regulation will be applying discretion to the application of certain of the AIM Rules for Companies and the AIM Rules for Nominated Advisers and will keep the situation under review, in particular the potential impact on financial reporting and will provide further guidance as necessary. On 26 March 2020, the LSE published an Inside AIM that sets out temporary changes relating to an AIM company's obligation to publish annual audited accounts in accordance with the AIM Rules for Companies (which follow on from the Companies House announcement that UK companies affected by coronavirus can apply for a three-month extension for filing their annual accounts – see item 5.1(c)).

5.5 MAR

- (a) *Regulation (EU) 2019/2115 amending, inter alia, MAR as regards the promotion of the use of SME growth markets.* Regulation 2019/2155 was published in the Official Journal in December 2019 and, inter alia, amends Articles 18 and 19 of MAR with effect from 1 January 2021. Article 19(3) is amended to require PDMR and PCA dealing notifications to be submitted within two, rather than the current three, business days after the transaction (see item 4.10 above). Article 18 is amended to require issuers and any person acting on their behalf (currently issuers or any person acting on their behalf) to draw up insider lists. Article 18(6) is also amended to enable member states in certain circumstances to require SME growth market issuers to maintain an insider list with information in relation to all persons who would be required to be included on that list pursuant to Article 18(1)(a) MAR (as opposed to just those who, due to the nature of their function or position within the issuer, have regular access to inside information). Article 18(6) (as amended) mandates ESMA to develop draft implementing technical standards (ITS) to determine the format of the insider list referred to in Article 18(6) (see item 5.5(b)).
- (b) *ESMA consultation on draft technical standards introduced by the amendments to MAR for the promotion of the use of SME growth markets.* On 6 May 2020, ESMA published the draft ITS mandated in the amendments to Article 18(6) MAR (as amended by Regulation (EU) 2019/2115 – see item 5.5(a)) and which set out the proposed format of the insider list to be used by SME growth market issuers. The draft ITS also propose that Commission Implementing Regulation (EU) 2016/347 on the precise format of insider lists and keeping insider lists be repealed in order that all the implementing measures on insider lists be consolidated in a single piece of legislation. The deadline for responding to the ESMA consultation is 15 July 2020.

5.6 Accounting

- (a) See item 5.3(b) regarding guidance issued by the FRC for auditors.

5.7 Takeovers

- (a) See item 4.7 - Moss Bros Group PLC scheme of arrangement.

5.8 Miscellaneous

- (a) *Modern slavery reporting in light of coronavirus.* On 20 April 2020, the Home Office published guidance on modern slavery reporting during the coronavirus pandemic. The guidance states that businesses which need to delay the publication of their modern slavery statement by up to six months due to coronavirus-related pressures will not be penalised. It states that businesses should state the reason for any delay in their modern slavery statement.
- (b) *Call for evidence on FCO's role in blocking foreign asset stripping in the UK.* On 7 April 2020, the Foreign Affairs Committee published an inquiry into the role of the Foreign and Commonwealth Office (**FCO**) in blocking foreign asset stripping in the UK. This inquiry will examine how the FCO assesses whether a potentially hostile party is seeking to secure significant influence or control over a UK company and in what circumstances the FCO should intervene. It will also focus on what safeguards are required in the forthcoming National Security and Investment Bill to ensure that the FCO has a full role in the decision-making process in relation to interventions. The call for evidence closes on 29 May 2020.
- (c) *European Commission guidelines on foreign investment screening in light of coronavirus.* On 25 March 2020, the European Commission issued a press release announcing the publication of guidelines to Member States to ensure a strong EU-wide approach to foreign investment screening in a time of public health crisis and related economic vulnerability. The aim is to preserve EU companies and critical assets, notably in areas such as health, medical research, biotechnology and infrastructures that are essential for the EU's security and public order, without undermining the EU's general openness to foreign investment.
- (d) *Temporary stamp duty measures due to coronavirus.* On 25 March 2020, HMRC updated its guidance on completing a stock transfer form and paying stamp duty to include information on a temporary set of processes that allow the HMRC to continue dealing with stamp duty for the duration of the coronavirus outbreak. The processes allow people to email HMRC documents for stamping, and HMRC will deal with those electronically rather than by applying a physical stamp. Where payment is needed, it must be made electronically. On 27 March 2020, the HMRC also updated the following guidance to reflect temporary measures put in place due to coronavirus: (i) schemes of arrangement; (ii) reliefs and exemption on paper shares; (iii) getting an opinion about payment or penalty; and (iv) claiming section 42 stamp duty group relief.

- (e) *Suspension of gender pay gap reporting.* On 24 March 2020, the Government Equalities Office (**GEO**) issued a press release stating that due to the coronavirus outbreak, the GEO and the Equality and Human Rights Commission have decided to suspend enforcement of the gender pay gap deadlines for this reporting year (2019/20) and, therefore, there will be no expectation on employers to report their data for this reporting year.
- (f) *CMA coronavirus announcement.* On 18 March 2020, the CMA issued a press release on changes to its working arrangements due to coronavirus. On 22 April 2020, the CMA published guidance on merger assessments during the coronavirus pandemic.

5.9 Cases

- (a) *Gwynt y Môr Ofo Plc v Gwynt y Môr Offshore Wind Farm Limited and others [2020] EWHC 850 (Comm).* The High Court held that an indemnity in a sale and purchase agreement (**SPA**) for the full cost of reinstatement of any assets that were destroyed or damaged "prior to Completion" was limited to destruction or damage occurring between signing the SPA and completion (and not any occurring prior to signing). The judge's conclusion was partly based on the fact that the parties had agreed a carefully structured and limited warranty (i.e. that, as at the date of the SPA, no defect or damage has been discovered in relation to the assets that is reasonably likely to cause material disruption; typical financial limitations applied), which would have been rendered pointless if the parties had also agreed to a broad indemnity to cover any damage to the assets suffered prior to signing the SPA.
- (b) *Towergate Financial (Group) Ltd and others v Hopkinson and others [2020] EWHC 984 (Comm).* The High Court held that a provision in an SPA that set out the time period within which to bring an indemnity claim had a dual condition precedent i.e. notice of an indemnity claim had to be given "as soon as possible" as well as on or before the seventh anniversary of the date of the SPA. These were two distinct requirements. On the facts, the claim failed because the buyer had not satisfied the condition precedent to give notice as soon as possible.
- (c) *In the matter of Inmarsat PLC [2020] EWHC 776 (Ch).* The High Court considered the issue of costs in relation to shareholders who had opposed (**objectors**) the sanction of a scheme of arrangement under Part 26 CA 2006 between Inmarsat and its shareholders where the objectors had withdrawn their objections on the morning of the sanction hearing. The High Court found that the objectors were not entitled to their costs, nor were they ordered to pay the company's costs. The High Court re-affirmed that the court's discretion as to costs under CPR44 was unfettered, but that it should be exercised in accordance with the usual guidelines.
- (d) *In the matter of Castle Trust Direct PLC & Ors [2020] EWHC 969 (Ch)* (judgment available on Lawtel and Westlaw). The High Court considered whether it was possible for creditors to meet remotely (rather than in person) for a scheme meeting. The court held that a meeting of creditors to consider a scheme of arrangement under Part 26 CA 2006 does not need to be a meeting

in person. The decision relates specifically to a scheme meeting and not a general meeting and goes further than *Byng v London Life Association Ltd [1990] Ch 170* (which contemplated that it would be possible to hold a general meeting electronically provided that shareholders were able to hear and be heard and to see and be seen) by giving directions that the meeting be held by attendance by telephone, accompanied by a webinar, such that not all creditors would be seen by one another.

- (e) *In the matter of Aon plc [2020] EWHC 1003 (Ch)* (judgment available on Lawtel). The High Court sanctioned a scheme of arrangement (under Part 26 CA 2006) and confirmed a reduction of capital which involved the insertion of a new Irish parent company (**Aon Ireland**). Two modifications were proposed to the scheme after the scheme meeting. The first modification was to reduce the nominal value of the new shares to be issued by Aon Ireland from \$150 per share to one cent per share. Clause 10 of the scheme document permitted modifications where the company and Aon Ireland consent and the court approves. The court was satisfied that the modification would not have caused any reasonable shareholder to take a different view in relation to the scheme if it had been put before them. The court was satisfied that there had not been a material change of circumstances and that approving the modification was not foisting on the shareholders something substantially different to what had been approved. The second modification related to changes to the scheme record time to address the impact of the closure of the London branch of Companies House and the potential delay in bringing the scheme into effect. The court approved this modification as it had no material effect on the rights of scheme shareholders.

6. **Any other business**

There was no other business.

3 August 2020