

THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 307th meeting
at 9:00 a.m. on 27th January 2021

1. **Welcome and apologies**

In attendance: John Adebisi; Mark Austin; Sam Bagot; Robert Boyle; Tom Brassington; Murray Cox; Lucy Fergusson; Nicholas Holmes; Chris Horton; Vanessa Knapp; Jon Perry; Caroline Rae; Patrick Sarch; Richard Spedding; Patrick Speller; Martin Webster; Victoria Younghusband; David Pudge (Chair); Juliet McKean (Secretary); Anne Kirkwood (alternate for Stephen Matthews and Liz Wall); and Jo Weston (alternate for Edward Baker).

Apologies: Edward Baker; Adam Bogdanor; Stephen Matthews; and Liz Wall.

2. **Pre-Emption Group**

The Chair welcomed Simon Fraser (**SF**), chair of the Pre-Emption Group (**PEG**), and Hannah Armitage (**HA**), Project Director at the FRC, to the meeting. After some introductory remarks from SF, views on ways to speed up capital raisings for large issuances, while still respecting pre-emption rights, and the advantages and disadvantages of different options to inform discussions between PEG and the FCA were discussed at the meeting.

The Chair thanked SF and HA for joining the meeting. SF and HA left the call.

3. **Approval of minutes**

The Chair reported that a draft of the minutes of the meeting held on 25 November 2020 was circulated to members on 22 December 2020. The Chair noted that no comments had been received on the draft minutes and, therefore, they were considered settled.

4. **Matters arising**

- 4.1 *Pension Schemes Bill.* The Committee noted that on 11 January 2021, the Government confirmed in a written response to a question for the Department for Work and Pensions that none of the provisions in Part 3 of the Pension Schemes Bill will be retrospective and the new criminal sanctions and information gathering powers will apply to all schemes where the act occurs, or in the case of a series of acts commences, after the powers come into force. It was also noted that the Pensions Regulator will produce guidance on the use of the new criminal sanction powers, but will consult with industry before doing so.

- 4.2 *Expansion of Dormant Assets Scheme.* The Chair reported that on 9 January 2021, HM Treasury (**HMT**) and the Department for Digital, Culture, Media & Sport announced the publication of their response to the consultation on expanding the Dormant Assets Scheme. It was noted that the scheme is being expanded to include assets from the insurance and pensions, investment and wealth management and securities sectors, including proceeds of, and distributions from, dormant shares and that the Government intends to legislate for the expansion of the scheme when parliamentary time allows. Robert Boyle, who led the Committee's response, noted that the Government's response largely reflects what was anticipated. However, it was noted that, regrettably, many of the comments made in the Committee's response on issues relating to intermediated securities had largely been ignored.
- 4.3 *Law Society Q&A on electronic signatures.* The Committee noted that on 6 January 2021, the Law Society Company Law Committee (**LSCLC**) published a Q&A on how to use electronic signatures and complete virtual executions, which aims to assist lawyers with some of the practicalities of using an electronic signature in England and Wales.
- 4.4 *Further extension of temporary restrictions on winding up petitions.* The Committee noted that on 8 December 2020, the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations 2020 were made and that these Regulations came into force on 31 December 2020. It was noted that they further extend the temporary restrictions on winding up petitions introduced by the Corporate Insolvency and Governance Act 2020 (**CIGA**) until 31 March 2021.
- 4.5 *AGMs (and wrongful trading).* The Chair noted that on 24 November 2020 the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020 were made (an explanatory memorandum was also published) and that these Regulations came into force on 26 November 2020. It was noted that they further extend the temporary shareholder meeting provisions in the CIGA to enable companies to hold AGMs virtually until 30 March 2021. It was also noted that they temporarily suspend liability under wrongful trading provisions in the Insolvency Act 1986 for a period beginning with 26 November 2020 and ending with 30 April 2021 (replicating the previous suspension between 1 March 2020 and 30 September 2020).

The Chair further noted that certain discussion papers have been published that look at the future of AGMs and whether they are fit for purpose, including the ShareAction paper on the future of the AGM published on 18 January 2021 (ShareAction sees a future where companies and their boards create a purposeful, on-going, values-based AGM process, through which they gather insight and input from shareholders and stakeholders) and the GC100 discussion paper entitled: 'Shareholder meetings – Time for change?' (published after the Committee meeting on 28 January 2021).

- 4.6 *HMT call for evidence on UK listing regime.* The Committee noted that on 19 November 2020, HMT published a call for evidence on the UK's listing regime. It was noted that HMT sought views on free float requirements, dual class share structures, track record requirements, prospectuses and dual and secondary listing. The Committee noted that the review is driven by the UK's departure from the EU and will inform proposals for reform to boost the UK's reputation as a destination for IPOs. The Joint CLLS/Law Society Prospectus and Listing Rules Working Group

submitted a response to the call for evidence on 5 January 2021. See minutes at item 2.

- 4.7 *Takeover Panel consultation on conditions to offers and the offer timetable.* The Chair reported that on 18 December 2020, the Joint CLLS/Law Society Takeovers Working Group submitted a response to the Takeover Panel consultation on conditions to offers and the offer timetable (PCP 2020/1). The Chair noted that the Takeovers Working Group had previously been involved in the informal pre-consultation undertaken by the Panel and, therefore, was broadly comfortable with the proposals that had been published for public consultation.
- 4.8 *National Security and Investment Bill.* The Chair reported that on 30 November 2020 he presented an overview of key issues and concerns with the Bill and the proposed new regime to the Minister as part of a roundtable event organised by BEIS and the Law Society. It was also reported that on 2 December 2020, a joint working group of the Committee and the LSCLC submitted written evidence on the Bill to the Public Bill Committee. The joint working group had also prepared a table of proposed amendments to the Bill which the Law Society submitted to BEIS on behalf of the joint working group. It was further reported that on 6 January 2021, the joint working group submitted a response to the BEIS consultation on secondary legislation which would define the sectors subject to mandatory notification in the Bill.

The Chair thanked Sam Bagot for leading on the responses to the Bill.

5. **Discussions**

- 5.1 *BEIS/Companies House consultations to combat fraud and improve corporate transparency.* The Chair reported that on 9 December 2020, BEIS and Companies House issued a press release announcing three consultations to support reforms to clamp down on fraud and give businesses greater confidence in transactions, namely on: (i) the powers of the Registrar (the response to this having been led by Richard Spedding); (ii) implementing the ban on corporate directors (the response to this having been led by Liz Wall); and (iii) improving the quality and value of financial information on the UK companies register (the response to this having been led by Robert Boyle). The Chair noted that these consultations follow the Government's response to the Corporate Transparency and Register Reform consultation that was published in September 2020 and close on 3 February 2021. It was noted that working groups had been formed with the LSCLC.

Richard Spedding commented briefly on the proposals set out in the consultation on the powers of the Registrar and highlighted that the key issues were in relation to: (i) the Registrar being able to exercise a discretionary power to query and check information before it is placed on the register - the working group is proposing that the Registrar should only be able to exercise this discretionary power pre-registration if it suspects fraud or criminal activity; (ii) the Registrar being able to remove certain filings that have legal effect, for example, in respect of a reduction of capital by way of a solvency statement – the working group is concerned about the huge impact this would have on certain corporate matters and does not think that there is a need for the Registrar to have this power; and (iii) the register of members being kept at Companies House – the working group's view is that a company needs to continue to

have control of this register, rather than it being held at Companies House, to ensure that share transfers can still be carried out efficiently.

Robert Boyle commented briefly on the proposals set out in the consultation on improving the quality and value of financial information on the UK companies register and highlighted that the key issues were in relation to: (i) reducing timescales for accounts to be filed for public companies; and (ii) directors being required to sign a declaration of eligibility whereby they will confirm that the company meets the conditions to file accounts under the accounts regime being used by the company e.g. small company accounts/dormant accounts – the working group's view is that the existing regime is adequate.

As Liz Wall was unable to attend the meeting, the Chair briefly highlighted certain key issues arising in relation to the consultation on implementing the ban on corporate directors and, in particular, whether the principles-based approach provides adequate transparency where the overseas corporate director is incorporated in a jurisdiction which does not have a public register that records details of that entity's directors and the potential issues in relation to applying the corporate director principles-based approach to LLPs and limited partnerships.

- 5.2 *FCA review of delayed disclosure of inside information.* The Chair noted that on 11 November 2020, the FCA published Primary Market Bulletin 31 that contains a link to the FCA's review of delayed disclosure of inside information, including commentary on periodic financial results. The Committee discussed the language used by the FCA in relation to its expectations regarding the treatment of annual results and agreed to raise this with the FCA at the next liaison meeting as there was a concern that this language should not be read as marking a shift in approach by the FCA or as requiring any change in practice for companies who do regularly assess their performance and results in light of market expectations.
- 5.3 *Shareholder "say on climate".* The Chair reported that in November 2020, Chris Hohn (the hedge fund manager who set up and runs TCI) had launched a campaign for the introduction of an annual non-binding advisory vote on climate-action plans at AGMs – see the sayonclimate.org website. It was noted that in October 2020, Chris Hohn used a shareholder resolution to force Spanish airports operator Aena to draft a new climate plan and submit it to an annual vote - being the first company in the world to adopt an annual shareholder vote on its climate action plan. It was further noted that Chris Hohn aimed to replicate that model at more companies in the next two years. The Chair also noted that, on 14 December 2020, Unilever announced that it would put its plans to cut greenhouse gas emissions to a shareholder vote at its May 2021 AGM – becoming the first blue-chip company to voluntarily give investors a say on its climate strategy. See also item 6.4(c) - New LR and FCA Technical Note on climate change.
- 5.4 *FCA issues warning notice to Carillion (in liquidation) and unnamed executive directors.* The Chair reported that on 13 November 2020, the FCA announced that it has issued a warning notice to Carillion and certain unnamed executive directors. Time did not allow a discussion of this item but it was proposed that this item would be considered at the next meeting. In the warning notice, the FCA states that it considers that Carillion breached: (i) Article 15 MAR (market manipulation) by disseminating information that gave false or misleading signals as to the value of its

shares; (ii) Listing Rule 1.3.3R (prohibition on publication of misleading information) by failing to take reasonable care to ensure that its announcements were not misleading, false or deceptive and did not omit data likely to affect the import of the information; (iii) Listing Principle 1 (procedures, systems and controls) by failing to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable the company to comply with its obligations under the Listing Rules; and (iv) Premium Listing Principle 2 (acting with integrity) by failing to act with integrity towards its holders and potential holders of its premium listed shares. The FCA has also stated that it considers that the relevant unnamed executive directors were knowingly concerned in the above breaches. The warning notice is not a final decision of the FCA, but indicates the FCA's intention to take action for the conduct referred to in the notice and to impose a public censure as opposed to a financial penalty. The Chair noted that, on 14 January 2021, the Insolvency Service issued a press release reporting that it has applied to the High Court for director disqualification orders against eight directors and former directors of Carillion.

- 5.5 *Law Commission call for evidence on smart contracts.* The Chair reported that on 17 December 2020, the Law Commission published a call for evidence on smart contracts (and a summary document – see also the current project status webpage), which closes on 31 March 2021. Given the specialised nature of this topic and the number of consultations in the pipeline and currently being worked on, the Committee determined that it would not respond to this call for evidence. However, the Chair noted that individual firms may wish to respond.

6. Recent developments

The Committee noted the following additional items in sections 6.1 to 6.9 which were set out in the agenda but which time did not allow them to consider.

6.1 Company law

- (a) *Brexit update to Companies House collection of guidance for limited companies, partnerships and other company types.* On 31 December 2020, Companies House updated its collection of guidance about registering, filing and disclosing information with Companies House following the end of the Brexit transition period, including by removing cross-border mergers, Societas Europaea (SEs) and EEIG guidance and adding UK *societas* and UKEIG guidance. Note that Companies House forms in relation to cross-border mergers and SEs have been discontinued and various Companies House forms have been updated to reflect the end of the Brexit transition period.

6.2 Corporate governance

- (a) *ICSA review of the effectiveness of independent board evaluation in the UK listed sector.* On 20 January 2021, the Chartered Governance Institute (ICSA) announced the publication of the findings of its review into the effectiveness of independent board evaluation in the UK listed sector. The review assessed the quality of evaluations and has identified a number of ways in which board evaluation might be improved. ICSA has concluded that there is scope for broader adoption of existing good practice in the way some external reviews are conducted, and greater transparency about the process that was followed –

it concludes that this is best done through a voluntary, rather than a regulatory, approach. Therefore, ICSA has published: (i) a voluntary code of practice for providers of external board performance reviews to FTSE 350 companies; (ii) voluntary good practice principles for listed companies, which companies are encouraged to apply when engaging an external board reviewer; and (iii) guidance for listed companies when reporting on their annual board performance review, designed to assist companies with their reporting obligations under the UK Corporate Governance Code.

- (b) *IA paper on shareholder priorities for 2021.* On 18 January 2021, the Investment Association (**IA**) published a paper in which it sets out its shareholder priorities for UK listed companies in 2021. This paper provides insights into the progress made by companies on the four areas identified by investors as critical drivers of long-term value for companies set out in the IA's 2020 paper (namely, responding to climate change, audit quality, stakeholder engagement and diversity), how investors' expectations have evolved and their expectations for 2021. The IA has also set out how IVIS will analyse these issues for companies with year-ends on or after 31 December 2020.
- (c) *Integrating stewardship into the investment process.* On 13 January 2021, the IA and the Pensions and Lifetime Savings Association announced the launch of a new steering group to examine how stewardship and a focus on long-term investment can be better integrated into the investment process to create sustainable value for savers and investors. The steering group will help deliver on the recommendations presented by the Asset Management Taskforce in its report entitled 'Investing with purpose: placing stewardship at the heart of sustainable growth' (see item 6.2(h)).
- (d) *QCA Remuneration Committee Guide.* On 9 December 2020, the Quoted Companies Alliance (**QCA**) announced the publication of an updated edition of its Remuneration Committee Guide (2020) which has been prepared to assist remuneration committee chairs and members to be effective in their roles. The guide takes account of the interests of shareholders, executives, the wider workforce and other stakeholders in small and mid-sized quoted companies. This guide is free for members, but non-members need to pay a fee.
- (e) *AIM Good Governance Review 2020/21.* On 2 December 2020, the QCA and UHY Hacker Young published their AIM Good Governance Review 2020/21. This review provides analysis and guidance on corporate governance disclosures for AIM companies.
- (f) *FRC research supports introduction of standards for audit committees.* On 2 December 2020, the FRC announced that research, commissioned by the FRC, has shown that the development of standards for audit committees would support a more consistent approach to promoting audit quality. The research, conducted by YouGov, involved interviews with Audit Committee Chairs on how they carry out their role.

- (g) *Consultation on revised ICGN Global Governance Principles.* On 30 November 2020, the International Corporate Governance Network (ICGN) published for consultation revisions to the ICGN Global Governance Principles. This review is part of a periodic three-year review cycle which aims to ensure that ICGN's flagship Principles are relevant and aligned with regulatory developments and market practice. The consultation closes on 31 January 2021. In addition, on 7 December 2020, the ICGN published its Policy Priorities 2020-21. Its five policy priorities remain unchanged from 2020 in terms of the five main themes, however, the workplan itself has been refreshed for the year to come.
- (h) *FRC review of corporate governance reporting.* On 26 November 2020, the FRC announced the publication of its annual review of corporate governance reporting against the UK Corporate Governance Code. The FRC states that although some companies have embraced the opportunities the revised Code offers, it has found that this was not consistent across the board. It states that unfortunately, some companies continue to treat the Code as a box-ticking exercise - where this happens, reporting is formulaic and companies do not seize the opportunity to meaningfully explain why they do not comply with its provisions.
- (i) *HM Treasury-led Asset Management Taskforce report on stewardship.* On 24 November 2020, the IA announced the publication of a report by the Asset Management Taskforce that sets out recommendations intended to strengthen stewardship and responsible investment in the UK. The Asset Management Taskforce is a group of the UK's leading investment managers, stakeholders and regulators, led by HMT and supported by the IA.
- (j) *Glass Lewis 2021 UK proxy voting policy guidelines.* On 24 November 2020, Glass Lewis announced the publication of its 2021 proxy voting policy guidelines for the UK.

6.3 Reporting and disclosure

- (a) *FRC thematic reviews, audit areas of focus and priority sectors for 2021/22.* On 10 December 2020, the FRC announced its corporate reporting and audit quality review programme for 2021/22 alongside its priority sectors for review. The FRC proposes to conduct five thematic reviews of corporate reporting on going concern and viability, IAS 37 – provisions, contingent liabilities and contingent assets, climate risk follow-up - streamlined energy and carbon reporting, alternative performance measures and interim reporting. These reviews will identify scope for improvement, as well as examples of better practices. As part of the FRC's programme of audit quality inspections, the FRC expects to pay close attention to the impact of Covid-19, fraud, estimates and climate risk. The priority sectors are travel, hospitality and leisure, retail, property and financial services.
- (b) *FRC consolidated covid-19 guidance for companies and auditors.* On 4 December 2020, the FRC announced the publication of consolidated covid-19 guidance for companies and auditors. The consolidated guidance supersedes all previous FRC guidance for companies and auditors. The

companies guidance contains information on corporate governance and reporting.

6.4 Equity capital markets

- (a) *Updated AFME selling restrictions for equity (EEA and UK) in light of Brexit.* AFME has published updated selling restrictions for equity transactions for use in documentation for offerings or admissions taking place from January 2021. The UK selling restriction wording reflects the UK version of the Prospectus Regulation as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018.
- (b) *Updated FCA list of equivalent non-UK regimes.* On 5 January 2021, the FCA published an updated version of its webpage on equivalence of non-UK regimes, which contains a list of third countries the laws of which the FCA regards as equivalent to certain requirements of DTRs 4 to 6.
- (c) *New LR and FCA Technical Note on climate change.* On 21 December 2020, the FCA issued a press release announcing the publication of Policy Statement PS20/17 that confirms that the FCA is introducing a new rule in Listing Rule 9.8 (Annual financial report) that requires commercial companies with a UK premium listing (including sovereign-controlled ones) to include a compliance statement in their annual financial report stating whether they have made disclosures consistent with the Task Force on Climate-related Financial Disclosures' (TCFD) recommendations or providing an explanation if they have not done so (see Appendix 1 of PS 20/17 for the new LR and guidance). The new LR came into force on 21 December 2020 and will apply for accounting periods beginning on or after 1 January 2021. The new LR is accompanied by guidance to help listed companies determine whether their disclosures are consistent with the TCFD's recommendations and recommended disclosures. The FCA has also published a Technical Note clarifying existing disclosure obligations in relation to ESG matters, including climate change, in EU legislation (PR and MAR) and the FCA Handbook (see Appendix 2 of PS 20/17). In the FCA's view, in certain circumstances, these disclosure obligations may already require securities issuers to disclose information on climate-related and other ESG matters. This Technical Note took effect on 21 December 2020. The FCA aims to publish further consultation papers to extend the application of TCFD disclosures in early 2021.
- (d) *Prospectus Regulation.* On 16 December 2020, the European Commission published the final version of its delegated regulation supplementing the Prospectus Regulation as regards the minimum information content of the document to be published for a prospectus exemption in connection with a takeover by means of an exchange offer, a merger or a division (along with Annexes). The regulation will enter into force on the twentieth day following its publication in the Official Journal.
- (e) *LSE amendments to its Primary Market Rulebooks.* On 10 December 2020, the LSE published Market Notice N20/20 that confirms amendments to the LSE's Primary Market Rulebooks that apply following the end of the Brexit

transition period. The amendments are consequential in nature to ensure alignment with the Government's legislative changes and reflect the UK's new position outside of the European Union. Amendments have been made to the Admission and Disclosure Standards, the AIM Rules for Companies and the AIM Rules for Nominated Advisers. These amendments became effective on 1 January 2021. AIM Notice 58 was also published on 10 December 2020 highlighting that Market Notice N20/20 has been published.

- (f) *FCA guidelines on ESEF annual financial reports.* On 4 December 2020, the FCA published draft guidelines for the preparation of European Single Electronic Format (**ESEF**) annual financial reports for submission to the FCA and updated its webpage on "Filing of ESEF Annual Financial Reports". The guidelines highlight the FCA's specific requirements and will be finalised when the FCA system is upgraded. In addition, on 9 December 2020, BEIS published an updated policy paper on the Government's position on the effect of the ESEF Regulation which sets out BEIS's position on the directors' sign-off of accounts of companies that are subject to the DTRs and the ESEF Regulation. This paper was updated to reflect, amongst other things: (i) the FCA's announcement that certain of the ESEF requirements would be delayed; and (ii) BEIS' decision not to implement a mandatory auditor reporting requirement on the electronic formatting of accounts as part of the application of the ESEF Regulation.
- (g) *PMB No 32.* On 3 December 2020, the FCA published Primary Market Bulletin 32. In this edition, the FCA reminds issuers, investors and other market participants of the changes that take effect when the "onshored" legislation enters into force at the end of the Brexit transition period. The FCA also gives an update on its work to implement some aspects of the "onshored" legislation.
- (h) *Shareholding notification and disclosure under DTR5.* On 23 November 2020, the FCA updated its webpage on shareholding notification and disclosure under DTR 5. On 12 November 2020, the FCA updated this webpage to confirm that only electronic TR-1 Forms submitted via a new DTR 5 portal (to be launched in Q1 2021) will be accepted (emailed forms will no longer be accepted). The FCA has published a Registration Guide to DTR 5 to help investors in completing all aspects of the two-step registration process on the FCA's Electronic Submission System, a link to which has been added to the FCA's webpage. A revised TR-1 Form was published on 29 December 2020. In addition, on 1 January 2021, the FCA published an indicative list of financial instruments that are subject to notification requirements by virtue of section 89F(1)(b)(iii) of FSMA 2000 and according to DTR 5.3.1R.

6.5 MAR

- (a) *FCA Final Notice in respect of a trader and portfolio manager for market abuse.* On 15 December 2020, the FCA issued a press release announcing the publication of a Final Notice in respect of Corrado Abbattista, a former trader and portfolio manager. The press release states that the FCA has fined Corrado Abbattista £100,000 for market abuse and prohibited him from

performing any functions in relation to regulated activity. This follows the Decision Notice published in September 2020.

6.6 Accounting

- (a) *UKEB website launched.* On 5 January 2021, the FRC issued a press release announcing that the UK Endorsement Board (**UKEB**) is being set up as the body responsible for influencing the development and subsequently endorsing and adopting new or amended international accounting standards, issued by the International Accounting Standards Board, for use by UK companies, from 1 January 2021. The press release also states that the UKEB website has been launched and that it will provide access to all key developments in relation to the UKEB and its work, including UK-adopted international accounting standards.
- (b) *BEIS Brexit guidance on accounting and auditing.* On 31 December 2020, BEIS published the following guidance: (i) accounting for UK companies – this covers how companies incorporated in the UK, or where the parent company is incorporated in the UK, can comply with UK accounting and reporting requirements; (ii) accounting for EEA organisations – this covers how EEA companies and groups with a presence in the UK can comply with UK accounting and reporting requirements; (iii) auditing for UK auditors and audit firms operating in the EEA – this is guidance for UK audit firms, UK auditors, and those with UK audit qualifications operating in the EEA; and (iv) auditing for EEA auditors and audit firms operating in the UK – this is guidance for EEA audit firms, EEA auditors, and those with EEA qualifications operating in the UK.
- (c) *FRC guidance for companies preparing IAS accounts for accounting periods straddling IP completion day.* On 23 December 2020, the FRC published guidance for preparers using IFRS and their auditors. This guidance includes proposed wording to explain the basis of accounts preparation where an entity has a financial period which straddles the end of the Brexit transition period. This is to ensure consistent understanding and application of requirements in the Companies Act 2006.
- (d) *Brexit and UK accounting and audit framework.* On 23 November 2020, BEIS and the FRC published further letters to the accounting sector on accounting and corporate reporting after the end of the Brexit transition period and separately to the audit sector regarding arrangements from 1 January 2021.

6.7 Takeovers

- (a) *Brexit and the Takeover Code.* On 4 January 2021, the Takeover Panel published Panel Statement 2021/1 announcing the publication of a revised version of the Takeover Code reflecting the amendments made by Instrument 2019/3 (The United Kingdom's withdrawal from the European Union), Instrument 2020/1 (Document charges) and Instrument 2020/2 (Minor amendments to the Takeover Code). These amendments took effect at 11:00pm on 31 December 2020. In addition, Practice Statement No 18

(Cross-Border Mergers) has been withdrawn as The Companies (Cross-Border Mergers) Regulations 2007 have been revoked.

6.8 Miscellaneous

- (a) *Market Watch 66*. On 11 January 2021, the FCA published Market Watch 66, which sets out the FCA's expectations for firms on recording telephone conversations and electronic communications when alternative working arrangements are in place, including increased homeworking. The FCA summarises that there is no specific restriction on the technologies or apps firms can use for communications, however, in all cases firms must understand the recording obligations and have effective policies, controls and oversight to ensure that these are met.

6.9 Cases

- (a) *Re PA Consulting Group Limited [2021] EWHC 29 (Ch)*. The High Court had to consider, among other things, class composition issues at a convening hearing in relation to a scheme of arrangement under Part 26 of the Companies Act 2006. In light of the complex capital structure of the company and the fact that, under the scheme, different members would be entitled to different forms of consideration - cash or cash and shares or, by election by some members only, shares only (subject to scaling back), such election affecting or limiting the share consideration available to other members - the company considered that there were 10 separate classes of members to consider the scheme. However, the company sought an order for convening meetings for only three classes of its members because seven of the classes were small and had already agreed to undertake to the court to be bound by the scheme. Snowden J highlighted that there were two significant differences in existing rights and rights to be conferred under the scheme, which divided the members of the company. These were: (i) the differences in share rights and the fact that those differences were reflected in the division of the scheme consideration; and (ii) the additional rights given to certain groups of members to elect to receive the consideration provided to them in different forms. The High Court agreed with Counsel that a shareholder whose proportion of cash or shares will be determined by an election made by them, even if it is subject to scaling back, is being offered a materially different proposal than a shareholder whose proportion of cash and shares will not be a result of choices made by that shareholder. The effect of that difference for class purposes is accentuated where the proportion of cash or shares which one group of shareholders may elect to receive will directly affect or limit what another group can receive. The High Court granted the order sought.
- (b) *Brett John Butcher and Darren Trueman v (1) Richard Pike (2) Adrian Arkell (3) Karl Carter [2020] EWHC 3432 (QB)*. A proviso in a time limitation provision in a sale and purchase agreement allowed the buyers to bring a warranty claim after the end of the limitation period "*where there has been fraud or negligent non-disclosure*". In an application for summary judgment, the High Court had to consider whether "non-disclosure" in the context of the proviso was to be assessed on the basis of what had been disclosed to the buyers in the disclosure letter (used to qualify the warranties) or whether

disclosure could be made outside of the disclosure letter. The buyers argued that any disclosure that prevented the proviso from engaging (meaning the limitation period for warranty claims would still stand) would need to be contained in the disclosure letter. The High Court, disagreeing with the buyers, was satisfied that non-disclosure used in the proviso did not mean only the facts and matters disclosed in the disclosure letter, relying on the fact that no reference was made to the disclosure letter in the proviso. If the sellers had disclosed matters to the buyers outside of the disclosure letter, the buyers couldn't argue that the matters had not been disclosed to them for the purposes of the proviso.

7. **Any other business**

CLSC/CLLS online event. It was noted that a CLSC/CLLS online event is taking place on 28 January 2021 to which the members of all of the CLLS Committees have been invited.

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