

THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 308th meeting
at 9:00 a.m. on 31st March 2021

1. **Welcome and apologies**

In attendance: John Adebisi; Mark Austin; Sam Bagot; Edward Baker; Adam Bogdanor; Robert Boyle; Tom Brassington; Lucy Fergusson; Nicholas Holmes; Chris Horton; Vanessa Knapp; Stephen Matthews; John Papanicola; Jon Perry; Patrick Speller; Allan Taylor; Liz Wall; Martin Webster; Victoria Younghusband; David Pudge (Chair); Juliet McKean (Secretary); Antonia Kirby (alternate for Caroline Rae); and Tony Foster (alternate for Richard Spedding).

Apologies: Caroline Rae and Richard Spedding.

2. **Change to Committee membership**

The Chair reported that Allan Taylor from White and Case has joined the Committee (in place of Patrick Sarch) and John Papanicola from Slaughter and May has joined the Committee (in place of Murray Cox). The Chair welcomed Allan and John to the Committee.

3. **Approval of minutes**

The Chair reported that a draft of the minutes of the meeting held on 27 January 2021 was circulated to members on 23 February 2021. The Chair asked members to send any comments on the minutes to the Secretary in the next couple of days, otherwise the minutes would be considered settled.

4. **Additional developments**

The Chair reported the following significant developments that were not set out in the agenda due to being published after the agenda circulation date:

- 4.1 On 31 March 2021, the FCA issued a statement confirming that it will soon be launching a four week consultation on amendments to the Listing Rules and related guidance to strengthen protections for investors in SPACs. This announcement follows on from recommendations made in Lord Hill's UK Listing review (see minute 5.3). It was noted that the FCA states that the consultation will consider the structural features and enhanced disclosure, including a minimum market capitalisation and a redemption option for investors, required to provide appropriate investor protection. It was further noted that the FCA intends to consult on removing the existing presumption of suspension of the listing for SPACs at the point of announcement of

an acquisition target to align the Listing Rules more closely with other major jurisdictions.

- 4.2 On 31 March 2021, the Takeover Panel published Panel Statement 2021/5 announcing the publication by the Code Committee of Response Statement 2020/1, which sets out amendments to the Takeover Code in relation to conditions to offers and the offer timetable following its previous consultation. It was noted that the amendments will take effect on 5 July 2021 and a new set of offer terms and conditions would need to be prepared to take account of the amendments. The Joint Takeovers Working Group of this Committee and the Law Society Company Law Committee (**LSCLC**) will be looking at this Response Statement and considering its consequences in more detail.

5. Matters arising

- 5.1 *Extension of duration of certain temporary measures under CIGA 2020.* The Chair reported that on 22 March 2021 the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2021 were made and an explanatory memorandum has also been published. It was noted that these regulations came into force on 26 March 2021 and further extend the duration of certain Covid-19 related temporary measures under the Corporate Insolvency and Governance Act 2020 (**CIGA 2020**) and related secondary legislation in respect of: (i) the restrictions on the use of statutory demands and winding up petitions (from 31 March 2021 to 30 June 2021); (ii) the modifications to moratorium provisions and temporary moratorium rules (from 30 March 2021 to 30 September 2021); (iii) the small supplier exemption from the restrictions on termination of supply contracts (from 30 March 2021 to 30 June 2021); and (iv) the temporary suspension of liability for wrongful trading (from 30 April 2021 to 30 June 2021). The Chair also noted that the time period for the temporary measures under CIGA 2020 in relation to holding shareholder meetings had not been extended and, therefore, ended on 30 March 2021 (see minute 6.3).
- 5.2 *Consultation on Law Commission's 14th Programme of Law Reform.* The Chair reported that on 24 March 2021 the Law Commission launched a consultation to establish what new areas of law it should review in its 14th Programme of Law Reform. It was noted that the Law Commission has suggested a number of themes and also some specific ideas for potential individual projects, and welcomes comments on these and other themes and areas that it has not outlined. It was also noted that the consultation closes on 31 July 2021 and the Law Commission intends to publish the final programme during the first half of 2022. The Chair noted that one of the suggested projects that will be of interest to the Committee is "deeds and variation of contracts", which includes building on the Law Commission's previous work on electronic execution.
- 5.3 *Review of the UK listing regime.* The Chair reported that on 3 March 2021 HM Treasury announced the publication of Lord Hill's UK Listing Review, which follows HM Treasury's call for evidence on the UK's listing regime that was published in November 2020 (to which the Committee responded). It was reported that the review's key recommendations include: (i) modernising listing rules to allow dual class share structures in the London Stock Exchange's (**LSE**) premium listing segment, giving directors (in particular, founders) enhanced voting rights on certain decisions, with safeguards to maintain high corporate governance standards; (ii)

reducing free float requirements from 25% to 15% and allow companies to use other measures to demonstrate liquidity; (iii) rebranding and repositioning the LSE's standard listing segment to increase its appeal to companies of all sizes and types; and (iv) a fundamental review of the prospectus regime so that in future admission to a regulated market and offers to the public are treated separately. It was also reported that the FCA has stated that it will carefully consider Lord Hill's recommendations for changes to the FCA's listing rules in line with its objectives and it aims to publish a consultation paper by the summer and make relevant rules by late 2021. It was further reported that the FCA has stated that it supports the proposal for a fundamental review of the legislative framework for the prospectus regime.

- 5.4 *National Security and Investment Bill*. The Chair reported that on 2 March 2021 BEIS: (i) announced that it has published its response to the consultation on secondary legislation to define the sectors subject to mandatory notification in the National Security and Investment Bill, which sets out the revised definitions of sensitive sectors in scope. It was noted that the definitions have been narrowed and may be further refined following continued engagement with stakeholders in the relevant sectors as the Bill continues its passage; (ii) published policy statements for each of the statutory instruments that must be passed before the new regime can commence. It was noted that the policy statements confirm that, subject to further Parliamentary scrutiny and debate on the Bill's proposed statutory instruments, BEIS intends to commence the regime by the end of 2021 - although informal indications have been given by BEIS that the regime could commence between July and September; and (iii) published an updated statement of policy intent that describes how the Secretary of State expects to use the call-in power in the Bill and the three risk factors that the Secretary of State expects to consider when deciding whether to use it. It was also noted that on 3 March 2021 BEIS published a new factsheet that provides an overview of the new Investment Security Unit (**ISU**) that will operate the National Security and Investment regime. The Chair also reported that, on 12 February 2021, the CBI sent a letter to the Secretary of State of BEIS expressing its concerns with the Bill, which was supported by the CLLS.
- 5.5 *Pension Schemes Act 2021*. The Chair reported that on 11 February 2021 the Pension Schemes Act 2021 received Royal Assent and that a written parliamentary statement was published on 2 March 2021 that sets out the next steps in terms of progressing secondary legislation that is due to be made under the Act. It was noted that on 11 March 2021 the Pensions Regulator announced the publication of its consultation, and draft policy, on its approach to the investigation and prosecution of the new criminal offences under the Act. It was noted that this consultation closes on 22 April 2021 and the final policy will be published later in 2021. It was also noted that on 18 March 2021 the Department for Work and Pensions launched a consultation on strengthening the Pensions Regulator's powers, which closes on 29 April 2021.
- 5.6 *BEIS/Companies House consultations to combat fraud and improve corporate transparency*. The Chair noted that on 2 February 2021 the Committee and the LSCLC submitted joint responses to the following BEIS consultations: (i) the powers of the Registrar; (ii) implementing the ban on corporate directors; and (iii) improving the quality and value of financial information on the UK companies register.

5.7 *FRC discussion paper on the future of corporate reporting.* The Chair noted that on 2 February 2021 the Committee submitted a response to the FRC discussion paper on the future of corporate reporting.

6. **Discussions**

6.1 *FCA/CLLS CLC Liaison Committee call on 3 February 2021.* Victoria Younghusband provided an update of those matters discussed on the call.

6.2 *BEIS consultation on UK audit and corporate governance reform.* The Chair reported that on 18 March 2021 BEIS announced the publication of its consultation on audit and corporate governance reform. The Chair noted that the consultation paper contains wide-ranging reforms to modernise the UK's audit and corporate governance regime, targeting the UK's biggest businesses and ensuring markets work effectively. It was noted that the proposals are centred on reforms to further the public interest in audit and corporate reporting and the establishment of the previously announced new regulator - the Audit, Reporting and Governance Authority (replacing the FRC). The Chair noted that the proposals respond to recommendations made by three independent reviews, namely Sir John Kingman's independent review of the FRC, the Competition and Markets Authority's (CMA) market study on the audit of FTSE 350 companies and Sir Donald Brydon's independent review of the quality and effectiveness of audit. It was also noted that BEIS has published a supplementary document on review recommendations that provides further information on how each recommendation is being addressed and a summary of the responses to BEIS' initial consultation on the CMA's recommendations.

The Chair also noted the following key proposed new requirements that will impact UK corporates that are "Public Interest Entities" (PIEs): (i) the requirement for a directors' statement about the effectiveness of internal controls for financial reporting – although such statement would not be subject to a mandatory external audit and assurance (unlike the US Sarbanes-Oxley approach); (ii) the requirement for an annual resilience statement covering the short, medium and long term – this would be a new section of the existing strategic report and would replace the current going concern and viability statements; (iii) the requirement for annual disclosure of the audit and assurance policy describing the directors' approach, over a rolling three-year forward look period, to seeking internal and external assurance of the information they report to shareholders - for quoted listed companies, this policy would be subject to an advisory shareholder vote at the time of its publication; (iv) the new distributable reserves reporting requirements that would apply to listed companies and AIM companies (not all PIEs) on an individual (although, in the case of a group, the parent company only) and group level; (v) the requirement for directors to make a statement when proposing a dividend confirming that the proposed dividend is within known distributable reserves and that payment of the dividend will not, in the directors' reasonable expectation, threaten the solvency of the company over the next two years; and (vi) the requirement for companies to include strengthened malus and clawback powers in contractual arrangements with directors – this particular proposal would be implemented initially through an amendment to the UK Corporate Governance Code, with subsequent consideration to be given to whether it should be applied to all listed companies and not just those which are subject to the Code.

It was further noted that the consultation closes on 8 July 2021. It was reported that Mark Austin has volunteered to lead the Committee's response and a joint working group is being formed with the LSCLC.

- 6.3 *AGMs.* The Chair reported that on 24 February 2021 the Chartered Governance Institute announced the publication of its new guidance about 2021 general meetings and the impact of Covid-19, which offers advice on how listed companies might hold meetings during the 2021 AGM season. It was noted that the guidance was prepared in association with a sub-group of the Committee and Martin Moore QC, and with the support of BEIS and the FRC. The Chair also reported that on 28 January 2021 GC100 published a discussion paper entitled: 'Shareholder meetings – Time for change?'. The Chair also noted that he had joined a working group established by the FRC to consider whether the current format for AGMs remained fit for purpose and whether legislative change was required. The Chair then led discussions on the approach being taken by companies to convening and holding their AGMs in the 2021 AGM season.
- 6.4 *BEIS consultation on mandatory climate-related financial disclosures by publicly quoted companies, large private companies and LLPs.* The Chair reported that on 23 March 2021 BEIS announced the publication of a consultation on mandatory climate-related financial disclosures by publicly quoted companies, large private companies and LLPs. The proposals in the consultation paper build on the expectation set out in the UK Government's 2019 Green Finance Strategy, that all listed companies and large asset owners should disclose in line with the Task Force on Climate-related Financial Disclosure (**TCFD**) recommendations by 2022. It was noted that the proposals are an important step towards the UK's intention to become the first G20 country to make TCFD-aligned disclosures mandatory across the economy as set out by the Chancellor on 9 November 2020. It was further noted that the consultation closes on 5 May 2021. It was reported that Chris Horton has volunteered to lead the Committee's response and a joint working group is being formed with the LSCLC and the CLLS Planning & Environmental Law Committee.
- 6.5 *FCA issues warning notice to Carillion (in liquidation) and unnamed executive directors.* Once again, time did not allow for a discussion of this item, however, it was proposed that this item would be considered at the next meeting.

7. **Recent developments**

The Committee noted the following additional items in sections 7.1 to 7.9 which were set out in the agenda but which time did not allow them to consider, other than items 7.2(a), 7.4(b) and 7.9(a) on which the Chair briefly reported.

7.1 **Company law**

- (a) No items to consider.

7.2 **Corporate governance**

- (a) *HSBC shareholder proposed resolution on climate change withdrawn.* Investors in HSBC have withdrawn a shareholder requisitioned resolution on

climate change proposed in January 2021 following discussions with the company. HSBC has announced it will, instead, propose a special resolution on climate change at its May AGM.

- (b) *Ethnic diversity on boards.* On 12 March 2021, the Parker Review committee published the results of its latest survey of FTSE 100 companies which show that significant progress has been made by FTSE 100 companies on improving the ethnic diversity of their boards. The survey shows that 74 FTSE 100 companies had ethnic minority representation on their company boards as of 2 November 2020. In addition, by early March 2021, a further seven FTSE 100 companies had appointed directors from a minority ethnic group. Ernst & Young has issued a press release on the survey results.
- (c) *PIRC UK Shareholder Voting Guidelines 2021.* PIRC has published its UK Shareholder Voting Guidelines 2021. The guidelines set out PIRC's views and recommendations on best practices on issues such as board structure, remuneration policy and management of social and environmental issues. A copy of the guidelines is available to order for £400 from the PIRC website.
- (d) *PLSA Stewardship and Voting Guidelines 2021.* On 11 March 2021, the Pensions and Lifetime Savings Association (**PLSA**) announced the publication of its Stewardship and Voting Guidelines 2021. In the press release, the PLSA: (i) advises voting against any motion that would make virtual AGMs permanent, rather than specifically linked to Government policy, or with a sunset clause attached; (ii) states that pension fund investors must be watchful this AGM season as to how companies' response to the pandemic has impacted their governance and workforce practices; and (iii) comments that the guide has been strengthened to reflect the TCFD reporting requirements on premium listed companies – it now reminds pension scheme investors that large companies should have clear evidence that they are either reporting against the TCFD framework, or preparing to do so, and that investors should consider voting against a company's climate change and sustainability policy if it cannot demonstrate this.
- (e) *FRC encourages more transparency when reporting against the Code.* On 26 February 2021, the FRC announced that it has issued advice for companies on how to report transparently and effectively when departing from certain provisions of the UK Corporate Governance Code. The press release states that it is important that companies: (i) embrace the flexibility offered by the Code and develop bespoke governance processes and practices which raise standards; (ii) make it easy for readers to find out which Provisions of the Code they have departed from in their annual report; and (iii) ensure that they provide full, clear and meaningful explanations for any such departures.
- (f) *IA expectations ahead of 2021 AGM season.* On 24 February 2021, the Investment Association (**IA**) published a press release that sets out investors' expectations on companies ahead of the 2021 AGM season, along with the IA's Shareholder Priorities for 2021 and Good Stewardship Guide 2021. The IA outlines its expectations of companies on issues including climate change, diversity and executive pay. IVIS will 'amber top' FTSE 350 companies that do not disclose either the ethnic diversity of their board or a credible action

plan to achieve the Parker Review targets of having at least one director from an ethnic minority background by 2021. IVIS will also 'amber top' the ESG report of any company in a high-risk sector (Financials; Energy; Transportation; Materials and Buildings; and Agriculture, Food and Forest Products) that does not address all four pillars of the TCFD (Governance; Risk Management; Strategy; and Metrics & Targets).

- (g) *Women on boards – five years on.* On 24 February 2021, the Hampton-Alexander Review issued a press release on the progress made to the number of women on boards, along with a five year summary report on improving gender balance. The press release states that the number of women on FTSE 350 boards has risen from 682 to 1026 in five years and FTSE 100, 250 and 350 companies all reached the target of women making up 33% of boards by the end of 2020.
- (h) *Wates Principles for large private companies.* On 5 February 2021, the FRC announced that Sir James Wates, Chairman of the Coalition group which introduced the Wates Principles for large private companies, had issued an article which provides some insight into reporting against the Wates Principles.
- (i) *PERG 13th Annual Report.* On 1 February 2021, the Private Equity Reporting Group announced the publication of its 13th annual report on the private equity industry's conformity with the Guidelines for Disclosure and Transparency in Private Equity.
- (j) *ISS FAQs on executive compensation and the Covid-19 pandemic.* On 25 January 2021, the Institutional Shareholder Services (**ISS**) published FAQs on executive compensation and the Covid-19 pandemic which provide general guidance as to how ISS Continental Europe Benchmark Research may approach Covid-related pay decisions in the context of ISS' holistic assessment of remuneration-related proposals.
- (k) *Glass Lewis approach to executive compensation.* On 22 January 2021, Glass Lewis published its approach to executive compensation in the context of the Covid-19 pandemic for the EMEA region. Glass Lewis states that while the Covid-19 pandemic has not changed its approach to executive pay, the document is intended to provide illustrative guidance on the intended application of its existing policy approach to executive remuneration at companies in the EMEA region under various scenarios expected in the wake of the coronavirus pandemic.

7.3 Reporting and disclosure

- (a) *Gender pay gap reporting enforcement delay.* On 23 February 2021, the Equality and Human Rights Commission announced that, due to the continued effects of the Covid-19 pandemic, enforcement action against employers failing to report their gender pay gap will start on 5 October 2021.
- (b) *FRC Lab report on Virtual and Augmented Reality in corporate reporting.* On 17 February 2021, the FRC announced the publication of the Financial

Reporting Lab's report on Virtual and Augmented Reality in corporate reporting. This report considers how virtual and augmented reality are and might be used to expand the scope and audience for corporate reporting, includes examples of current practice and highlights some possible future uses.

- (c) *FCA/FRC joint statement on extended financial information timelines.* On 27 January 2021, the FCA and FRC published a joint statement reminding companies that the temporary reliefs for reporting published financial information continue to apply.
- (d) *Inside AIM on financial reporting deadlines.* On 27 January 2021, the LSE published an Inside AIM that confirms that its temporary measures for reporting deadlines in relation to the publication of audited annual results and half-yearly reports remain available for AIM companies until further notice of an orderly transition back to standard reporting periods.

7.4 **Equity capital markets**

- (a) *Amendments to Prospectus Regulation.* On 15 February 2021, the European Council announced that it has adopted the proposed regulation amending the Prospectus Regulation as regards an EU recovery prospectus and other amendments to facilitate the recapitalisation of EU companies on financial markets impacted by the Covid-19 pandemic. The new EU recovery prospectus is intended to make it easier for companies to raise capital to meet their funding needs, while ensuring adequate information is provided to investors, and will be available for capital increases of up to 150% of outstanding capital within a period of 12 months. The new regime will apply until the end of 2022. The amendments to the Prospectus Regulation came into force on 18 March 2021. See also item 7.4(c) on the Prospectus Regulation.
- (b) *New DTR 5 portal goes live.* On 22 March 2021, the FCA announced that the new major shareholdings notification portal is now operational. TR-1 notifications in relation to voting rights held in an issuer admitted to trading on a UK regulated market must be submitted to the FCA via the new portal via the FCA's Electronic Submission System.
- (c) *Prospectus Regulation.* On 28 January 2021, ESMA announced the publication of an updated version of its Q&A on the Prospectus Regulation. Six new Q&As have been added to provide clarification on: (i) the order of information in a prospectus; (ii) financial information which only covers short periods; (iii) use of the same prospectus to make several offers; (iv) disclosure requirements concerning statements prepared by an expert; (v) application of an exemption in Article 1(5) of the Prospectus Regulation; and (vi) which disclosure annexes should be applied when drawing up a prospectus. On 4 March 2021, ESMA published its final guidelines on disclosure requirements under the Prospectus Regulation.

7.5 **MAR**

- (a) *FCA fines and prohibits trader for market abuse.* On 4 March 2021, the FCA announced that it has fined Mr Adrian Geoffrey Horn, formerly a market making trader at Stifel Nicolaus Europe Limited, £52,500 for market abuse and prohibited him from performing any functions in relation to regulated activity. The FCA found that Mr Horn had engaged in market abuse using a practice known as 'wash trading' that involved Mr Horn intentionally placing buy orders in McKay Securities Plc shares that traded with his existing sell orders (and vice versa).

7.6 **Accounting**

- (a) See minute 6.2 - BEIS consultation on UK audit and corporate governance reform.

7.7 **Takeovers**

- (a) No items to consider, but see minute 4.2.

7.8 **Miscellaneous**

- (a) *CMA final revised mergers assessment guidelines.* On 18 March 2021, the CMA announced the publication of updated merger assessment guidelines (along with a summary of the consultation responses) following a consultation in November 2020. The guidelines have been revised in order to bring them up to date with current best practice.

7.9 **Cases**

- (a) *Duomatic principle: consent of beneficial owners.* In *Byers and others v Chen Ningning [2021] UKPC 4*, the Privy Council held that the consent of the ultimate beneficial owner of shares was sufficient for the *Duomatic* principle to apply, referring to its decision in *Ciban Management Corp v Citco (BVI) Ltd [2020] UKPC 21*. The *Byers* case concerned a company whose sole shareholder had a sole shareholder that was an individual who was making the relevant decisions. In *Satyam Enterprises Ltd v (1) John Vincent Burton (2) JVB Seven Properties Ltd [2021] EWCA Civ 287*, the Court of Appeal also referred to *Ciban* and stated that *Re Duomatic Ltd [1969] 2 Ch 365* "refers to shareholders with a right to attend and vote, or in other words the registered (legal) owners of the shares, but the same applies to beneficial owners, at least where they take all the relevant decisions". The *Satyam Enterprises* case concerned a director acting on the instructions of the beneficial owner of the shares in the company, which the Court of Appeal held was sufficient to satisfy the *Duomatic* principle (although the *Satyam Enterprises* case has been referred back to the High Court to determine whether the transaction the subject of the claim amounted to an unlawful return of capital such that it could not be ratified under the *Duomatic* principle).
- (b) *Okpabi and others v Royal Dutch Shell Plc and another [2021] UKSC 3*. The Supreme Court considered a jurisdiction appeal which raised the question of

whether the claimants had an arguable case that a UK domiciled parent company owed them a common law duty of care so as properly to found jurisdiction against a foreign subsidiary company as a necessary and proper party to the proceedings – a similar issue was addressed in *Lungowe v Vedanta Resources plc* [2019] UKSC 20. The Supreme Court reaffirmed its view that whether a parent company owes a duty of care in relation to the activities of its subsidiaries, vis-à-vis persons affected by those activities, is to be determined on ordinary, general principles of the law of tort regarding the imposition of a duty of care – in the context of parent/subsidiary relationships, whether a duty of care arises: "... depends on the extent to which, and the way in which, the parent availed itself of the opportunity to take over, intervene in, control, supervise or advise the management of the relevant operations (including land use) of the subsidiary.". The Supreme Court also observed that there is no general principle that a parent company could never incur a duty of care in respect of the activities of a subsidiary merely by maintaining group-wide policies and guidelines. As with *Vedanta*, the Supreme Court held that there was a real issue to be tried.

- (c) *Fairford Water Ski Club Limited v (1) Craig Ronald Cohoon (2) Craig Cohoon Watersports* [2021] EWCA Civ 143. The Court of Appeal had to consider whether a company director had failed to sufficiently disclose his interest in a management agreement entered into between the company and a firm of which the director was a partner as required by section 317 of the Companies Act 1985. Reversing the High Court's decision, the Court of Appeal held that, on the facts, the disclosure made by the director was sufficient to comply with section 317. The judgment provides some helpful guidance on the operation of section 317 as well as its successor, section 177 of the Companies Act 2006 (CA 2006). The most interesting observations are in relation to: (i) the level of detail and explanation that a declaration of interest should contain; and (ii) when a declaration of interest should be made.
- (d) *Re Euro Accessories Limited* [2021] EWHC 47 (Ch). In a petition brought under section 994 CA 2006, the High Court had to consider the interpretation of a provision in a company's articles of association which gave the majority shareholder an option to acquire the shares of the minority shareholder for 'fair value'. The shareholders disagreed on the meaning of 'fair value'. The High Court noted that the wording of the provision focused on the value of the property owned by the minority shareholder which was to be transferred under the option. It held (following previous case law) that, unless there is contrary indication, the general principle of share valuation is that what must be given a 'fair value' is what is being compulsorily transferred. Therefore, the majority shareholder was entitled to apply a discount when buying the shares to reflect the fact that the shares represented a minority shareholding - the minority shareholder could not insist on payment for a proportionate part of the controlling stake which the majority shareholder would thereby build up or a pro rata part of the value of the company's net assets or business undertaking.
- (e) *Opinion of Advocate General on Article 3(2) and Article 6 of the Prospectus Directive*. An Advocate General opinion delivered in respect of a request for a preliminary ruling on questions referred by the Spanish Supreme Court

considers that Article 6 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (**Prospectus Directive**), in the light of Article 3(2)(a) of that directive, must be interpreted as meaning that, where an offer of shares to the public for subscription is directed at both retail and qualified investors, and a prospectus is issued, an action for damages arising from the prospectus may be brought by qualified investors, even though it is not necessary to publish a prospectus where the offer concerns exclusively qualified investors.

28 April 2021