

THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 313th meeting
at 9:00 a.m. on 26th January 2022

1. **Welcome and apologies**

In attendance: John Adebisi; Mark Austin; Sam Bagot; Edward Baker; Adam Bogdanor; Robert Boyle; Lucy Fergusson; Nicholas Holmes; Chris Horton; Vanessa Knapp; Stephen Mathews; John Papanichola; Jon Perry; Caroline Rae; Patrick Speller; Allan Taylor; Martin Webster; Victoria Younghusband; David Pudge (Chair); Juliet McKean (Secretary); Danette Antao (alternate for Tom Brassington); Mohammed Senouci (alternate for Richard Spedding); and Matthew Rous (**MR**) (Chief Executive of the CLLS).

Apologies: Tom Brassington; Richard Spedding; and Liz Wall.

The Chair welcomed MR to the Committee meeting and introduced MR as the new Chief Executive of the CLLS. MR informed the Committee that he has a background in the Diplomatic Service and that he served as Chief Executive of the China-Britain Business Council before joining the CLLS. MR also informed the Committee that he would be leading the CLLS's work on promoting the valuable work that the CLLS does to a wider audience in order to enhance the profile of the CLLS and the work of its various committees and sub-committees.

2. **Approval of minutes**

A draft version of the minutes of the meeting held on 24 November 2021 was circulated to members on 22 December 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.

3. **Matters arising**

- 3.1 *Mandatory climate-related financial disclosures by publicly quoted companies, large private companies and LLPs.* The Chair reported that the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 and the Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022 were made on 17 January 2022 and come into force on 6 April 2022. The Chair noted that these regulations introduce a new reporting requirement for in scope companies and LLPs to disclose climate-related financial information in line with the recommendations of the Taskforce on Climate-related Financial Disclosures (**TCFD**). It was noted that the regulations are more closely aligned with the TCFD recommendations than the original proposals in the consultation paper, which is

consistent with comments made by the Committee and the Law Society Company Law Committee in their joint response to the consultation.

- 3.2 *NSI Act.* The Chair reported that the National Security and Investment Act 2021 (Commencement No. 2 and Transitional and Saving Provision) Regulations 2021 were made on 15 December 2021, which brought the National Security and Investment (**NSI**) Act 2021 into full force on 4 January 2022. The Chair noted that on 17 December 2021 BEIS published guidance to assist acquirers in completing and registering a notification form under the NSI Act, along with the mandatory notification form, the voluntary notification form, the retrospective validation form and the NSI Act declarations that will need to be provided when an NSI Act notification is being submitted. See also minutes 4.5 and 5.8(a).
- 3.3 *FCA PS21/23 on enhancing climate-related disclosures by standard listed companies.* The Committee noted that on 17 December 2021 the FCA announced the publication of PS21/23 on enhancing climate-related disclosures by standard listed companies in which it confirms that it is extending the application of the existing climate-related disclosure requirements in the Listing Rules that apply to premium listed commercial companies to issuers of standard listed shares (both equity shares and shares other than equity shares) and standard listed issuers of GDRs representing equity shares (in each case excluding standard listed investment entities and shell companies). It was also noted that new LR 14.3.27R applies for financial years beginning on or after 1 January 2022. It was further noted that the FCA has: (i) incorporated references to the TCFD's new guidance on metrics, targets and transition plans and updated implementation annex in the guidance provisions for both premium and standard listed issuers in scope of the relevant rules; (ii) introduced an additional guidance provision related to the TCFD's finalised guidance on transition plans; and (iii) updated Technical Note 801.1 (Disclosures in relation to ESG matters, including climate change) to reflect the new Listing Rule and associated guidance and implement minor changes to certain references to EU legislation.
- 3.4 *HMT summary of responses to consultation on the UK Prospectus Regime Review.* The Chair reported that on 16 December 2021 HM Treasury (**HMT**) published a summary of responses to its consultation on the UK Prospectus Regime Review. It was noted that HMT reported that the overwhelming majority of respondents supported the Government's overall approach to reforming the UK prospectus regime and agreed that reform in this area could bring about tangible benefits because, as some respondents noted, the current regime is overly prescriptive, costly, inflexible and acts as a deterrent to some companies offering shares, including to retail investors. It was also noted that the Government will set out its intended next steps in due course.
- 3.5 *HMT summary of responses to consultation on a power to block listings on national security grounds.* The Committee noted that on 10 December 2021 HMT published a summary of responses to its consultation on a power to block listings on national security grounds. It was also noted that HMT reported that overall respondents were supportive of the Government's objectives to take a power to block listings on national security grounds to the extent that it is implemented in a way that does not disproportionately impact the attractiveness of UK capital markets. It was further noted that HMT states in the response that this policy will require legislation to be

enacted but more policy development is needed before that is possible, including further formal consultation as appropriate.

- 3.6 *FCA Primary Market Effectiveness Review*. The Committee noted that on 2 December 2021 the FCA announced the publication of Policy Statement PS21/22 on "Primary Market Effectiveness Review: Feedback and final changes to the Listing Rules" and confirmed changes to the Listing Rules (which came into force on 3 December 2021) to ensure that the UK's public markets remain a trusted and attractive place to list successful companies and provide opportunities for companies to grow from which investors will benefit. It was also noted that minor changes (which came into force on 10 January 2022) had been made to the Listing Rules, Prospectus Regulation Rules and DTRs to modernise and streamline those rules. It was further noted that the FCA received strong engagement with the part of its consultation that sought views on the overall structure of the UK listing regime and whether wider reforms could improve longer-term effectiveness and that the FCA intends to provide further feedback on this in the first half of 2022, including proposed next steps.
- 3.7 *Consultation on corporate re-domiciliation*. The Chair reported that on 7 January 2022 a joint working group of the Committee and the Law Society Company Law Committee, led by Jon Perry, submitted its response to the BEIS, HMT and HMRC consultation on corporate re-domiciliation that sets out proposals to introduce a UK re-domiciliation regime. It was noted that responses were also submitted by the CLLS Insolvency Law Committee, the CLLS Revenue Law Committee and the Law Society on the technical chapter on tax issues.

4. **Discussions**

- 4.1 *Panel Statement 2021/26*. The Chair reported that on 2 December 2021 the Takeover Panel published Panel Statement 2021/26 announcing the publication of Public Consultation Paper 2021/1 which proposes amendments to various provisions of the Takeover Code. It was noted that the consultation closes on 18 February 2022 and the Code Committee expects to publish a Response Statement setting out the final amendments to the Takeover Code in Spring 2022, which are anticipated to come into effect approximately one month after the publication of the Response Statement. It was also noted that the Joint CLLS/Law Society Takeovers Working Group is preparing a response to this consultation.
- 4.2 *HMT UK Secondary Capital Raising Review*. Mark Austin provided an update to the Committee.
- 4.3 *FCA/CLLS CLC Liaison Committee call*. Victoria Younghusband updated the Committee in respect of the call that was held on 3 December 2021.
- 4.4 *'oneNDA for M&A' project*. Sam Bagot provided an update to the Committee.
- 4.5 *Share security and the NSI Act*. The Chair reported that the CLLS Financial Law Committee (**CLLS FLC**) has written to Lord Callanan (Minister for Business, Energy and Corporate Responsibility) and the ISU to highlight legal issues of significant concern for existing and proposed transactions regarding the application of the NSI Act where security over shares of a company in a specified sector is taken. The Chair further reported that he has also written to Lord Callanan and the ISU to endorse the

issues raised in the letter and that following a call with BEIS to discuss the issues raised in the letter, the CLLS FLC has submitted a subsequent letter with further thoughts for consideration by BEIS and the ISU.

- 4.6 *Article on related party transactions on the London Stock Exchange: What works and what does not?* The Chair noted that an article on related party transaction rules governing companies listed on the Main Market of the London Stock Exchange and AIM written by Paul Davies has been published in the Business Law Review.

5. **Recent developments**

The Committee noted the following additional items in sections 5.2 to 5.4 and 5.6 to 5.9 which were set out in the agenda, but which time did not allow them to consider, other than the Chair briefly reported on the case in item 5.9(a).

5.1 **Company law**

- (a) No items to consider.

5.2 **Corporate governance**

- (a) *PERG 14th Annual Report*. On 16 December 2021, the Private Equity Reporting Group announced the publication of its 14th annual report on the private equity industry's conformity with the Guidelines for Disclosure and Transparency in Private Equity and an updated version of its guide to good practice reporting by portfolio companies.
- (b) *FRC report on creating positive culture*. On 9 December 2021, the FRC announced the publication of a report on "Creating positive culture - opportunities and challenges" which builds on the work the FRC has done to promote corporate culture as an essential element of good governance. The report finds that aligning culture with purpose, values and strategy can strengthen a company's business model and help companies to better manage resources and be more equipped to face future challenges.
- (c) *ISS 2022 benchmark policy updates*. On 7 December 2021, Institutional Shareholder Services Inc. announced the publication of updates to its 2022 ISS benchmark proxy voting policies, including the United Kingdom & Ireland Proxy Voting Guidelines – an executive summary of the key updates and policy development process has also been published. The updated policies will generally be applied for shareholder meetings taking place on or after 1 February 2022, except for those updates that are being announced with a one-year transition period and which will become effective in 2023.
- (d) *Updated Glass Lewis approach to executive compensation*. On 2 December 2021, Glass Lewis published an updated version of its approach to executive compensation in the context of the COVID-19 pandemic for the EMEA region.
- (e) *AIM Good Governance Review 2021/22*. On 1 December 2021, the QCA and UHY Hacker Young published their AIM Good Governance Review 2021/22, which outlines the key trends of small and mid-sized quoted companies'

corporate governance performance each year. This ninth annual review takes a closer look at post-Covid recovery, ESG and board performance reviews.

- (f) *FRC report on Effective Stewardship Reporting*. On 1 December 2021, the FRC announced the publication of its report on 'Effective Stewardship Reporting: Examples from 2021 and expectations for 2022', which analyses reports from the first signatories to the revised Stewardship Code published in September 2021. The report identifies good examples of reporting and areas where the FRC wishes to see improvement next year, such as how signatories are managing market-wide and systemic risks as well as their approach to stewardship in asset classes other than listed equities.
- (g) *IA 2022 Principles of Remuneration*. On 18 November 2021, the Investment Association announced the publication of its Principles of Remuneration for 2022 and letter to the Chairs of the Remuneration Committees of FTSE 350 companies.

5.3 Reporting and disclosure

- (a) *Electronic reporting format*. On 17 December 2021, the FCA published Handbook Notice No. 94 which sets out, amongst other things, its response to feedback received on proposed changes to the UK Transparency Directive European Single Electronic Format (**TD ESEF**) Regulation and FCA amending instrument FCA 2021/66 which implements the changes and came into force on 17 December 2021. Broadly, these changes allow issuers to select from a wider range and more recent versions of IFRS taxonomies to meet their obligations to 'mark up' (or tag) their annual financial statements under DTR 4.1.14R and Article 4 of the UK TD ESEF Regulation.
- (b) *FRC Review of Corporate Governance Reporting*. On 25 November 2021, the FRC announced the publication of its annual Review of Corporate Governance Reporting. The review found that there was a general improvement in reporting against the UK Corporate Governance Code, however, there is still room for further improvement in areas such as substantive disclosures on board appointments, succession planning and diversity. The review also found that more focus on reporting the effectiveness of internal control and risk management systems would enhance the level of confidence in the company's control framework.

5.4 Equity capital markets

- (a) *PMB No. 37*. On 9 December 2021, the FCA published Primary Market Bulletin No. 37. In this edition, the FCA: (i) covers the implementation of its postponed rules that require issuers to publish their annual financial reports in a structured format; (ii) explains the importance of adequate business continuity procedures for Primary Information Providers and suggests issuers may want to consider having more than one PIP account; and (iii) reviews sponsor requirements to identify and manage conflicts of interest, including some feedback on the range of submissions the FCA has received since it published Technical Note 701.3 (Identifying and managing conflicts).

- (b) *Public censure and fine for breaches of AIM Rules 13 and 31.* On 30 November 2021, the London Stock Exchange published an AIM disciplinary notice (AD24) announcing that Sensyne Health plc had been publicly censured and fined £580,000 (discounted to £406,000 for early settlement) for breaches of Rule 13 (Related party transactions) and Rule 31 (AIM company and directors' responsibility for compliance) of the AIM Rules for Companies. The breaches relate to the company paying post-IPO cash bonuses to its CEO and CFO against the background that the possibility of IPO related bonuses for the CEO and CFO was not referred to in the company's Admission Document and the nominated adviser was not properly consulted in respect of the bonuses, which were related party transactions and subject to the protections afforded by AIM Rule 13.
- (c) *European Commission consultation on Listing Act.* On 19 November 2021, the European Commission published a consultation document in respect of an initiative that aims to simplify the listing requirements, including post-listing, in order to make public capital markets more attractive for EU companies and to facilitate access to capital markets for SMEs. The consultation closes on 11 February 2022.

5.5 **MAR**

- (a) No items to consider.

5.6 **Accounting**

- (a) *FRC Developments in Audit 2021.* On 18 November 2021, the FRC published its annual "Developments in Audit" report, which sets out the FRC's assessment of the UK audit market and its expectations of how audit firms should deliver audit quality improvements.

5.7 **Takeovers**

- (a) *Panel Statement 2021/27.* On 2 December 2021, the Takeover Panel published Panel Statement 2021/27 announcing that, with immediate effect, the Panel Executive will only accept offer documentation in electronic form. See also minute 4.1 on Panel Statement 2021/26.

5.8 **Miscellaneous**

- (a) *Updated CMA jurisdiction and procedure guidance to reflect NSI Act.* On 4 January 2022, the Competition & Markets Authority (CMA) published updated CMA2 guidance on the CMA's jurisdiction and procedure in operating the merger control regime set out in the Enterprise Act 2002 to reflect changes to that Act made by the NSI Act.
- (b) *Director disqualification.* On 15 December 2021, the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act received Royal Assent. The Act includes new powers extending the scope of the current investigation and enforcement regime under the Company Directors Disqualification Act 1986 to include former directors of dissolved companies,

without it being necessary to first restore the company to the register. These measures were originally consulted on in the BEIS 2018 consultation on Insolvency and Corporate Governance.

5.9 Cases

- (a) *Primekings Holding Limited & Ors v King & Ors (Re Kings Solutions Group Ltd) [2021] EWCA Civ 1943*. The Court of Appeal held that the correct analysis of the Court of Appeal majority in *Graham v Every [2015] 1 BCLC 41* is that there must be a causal connection between the personal actions of a shareholder or third party and some other act or omission constituting conduct of the company's affairs in order for such matters to be pleaded in an unfair prejudice petition pursuant to section 994 of the Companies Act 2006. The justification for this approach is underpinned by the principle that statements of case should only set out the facts that go to make up each essential element of the cause of action, which Lord Justice Snowden emphasised as being particularly relevant to pleadings in unfair prejudice petitions as they frequently involve parties seeking to raise myriad extraneous personal grievances.

6. Any other business

No other business was raised.

6 April 2022