THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 331st meeting
at 9:00 a.m. on 29th January 2025

1. **Welcome and apologies**

*In attendance*: Adam Bogdanor (*Bryan Cave Leighton Paisner LLP*); Tom Brassington (*Hogan Lovells International LLP*); Richard Burrows (*Macfarlanes LLP*); Jamie Corner (*Simmons & Simmons LLP*); Andrew Edge (*Taylor Wessing LLP*); Lucy Fergusson (*Linklaters LLP*); Sarah Hawes (alternate for Caroline Rae, *Herbert Smith Freehills LLP*); James Inness (*Latham & Watkins LLP*); James Kaye (alternate for Chrissy Findlay, *Pinsent Masons LLP*); Vanessa Knapp (*Independent*); George Knighton (*Skadden Arps Slate Meagher & Flom (UK) LLP*); Stephen Mathews (*A&O Shearman LLP*); Juliet McKean (Secretary, *Clifford Chance LLP*); James Parkes (*CMS Cameron McKenna Nabarro Olswang LLP*); Ben Perry (*Sullivan & Cromwell LLP*); Jon Perry (*Norton Rose Fulbright LLP*); David Pudge (Chair, *Clifford Chance LLP*); Allan Taylor (*White and Case LLP*); Simon Tysoe (*Slaughter and May*); Liz Wall (*A&O Shearman LLP*); Adrian West (*Travers Smith LLP*); Annie Whiteside (alternate for Ziyad Nassif, *Freshfields Bruckhaus Deringer LLP*); Simon Witty (*Davis Polk & Wardwell London LLP*); Simon Wood (*Addleshaw Goddard LLP*); and Victoria Younghusband (*Charles Russell Speechlys LLP*).

*Apologies*: Chrissy Findlay (*Pinsent Masons LLP*); Kevin Hart (*City of London Law Society*); Nicholas Holmes (*Ashurst LLP*); Caroline Rae (*Herbert Smith Freehills LLP*); Lucy Reeve (*Chair of the Law Society Company Law Committee*); Matthew Rous (*City of London Law Society*); and Ziyad Nassif (*Freshfields Bruckhaus Deringer LLP*).

The Chair welcomed James Inness as a new member of the Committee.

1. **Approval of minutes**

The Chair noted that a draft version of the minutes of the meeting held on 27 November 2024 was circulated to members on 3 January 2025. The Chair noted that the minutes are considered settled.

1. **Matters arising**
	1. *Companies House ECCTA implementation plan*. The Chair reported that on 21 January 2025 Companies House published an updated version of its policy paper that contains its current intended timetable for implementing the reforms in ECCTA 2023. The Chair noted that the revised timetable states that Companies House should be able to register AML-regulated UK firms as an Authorised Corporate Service Provider from 25 February 2025 and should be able to allow individuals to voluntarily verify their identity from 25 March 2025. The Chair also reported that the Registrar (Identity Verification and Authorised Corporate Service Providers) Regulations 2025 and the Unique Identifiers (Application of Company Law) Regulations 2025 were made on 20 January 2025. The Chair noted that no substantive changes have been made to the drafts of these regulations published in 2024, which have been considered previously by the Committee.
	2. *Frischmann v Vaxeal Holdings SA [2023] EWHC 2698 (Ch)*. The Chair noted that a final version of the note prepared by the CLLS Financial Law Committee on whether an attorney can execute a s.136 Law of Property Act 1925 legal assignment on behalf of an English or overseas company or an English LLP had been circulated to members of the Committee with the agenda for this meeting of the Committee. Members of the Committee agreed that the note should be endorsed by the Committee.
2. **Discussions**
	1. *FCA enforcement guidance consultation*. The Chair reported that on 28 November 2024 the FCA published the second phase of its consultation on enforcement transparency proposals. The Chair noted that the FCA has highlighted that it has made the following four significant changes to its initial proposals in response to feedback received: (i) the potential negative impact on a firm would be explicitly considered as part of a public interest test; (ii) firms would be given 10 business days’ notice ahead of any announcement being made to allow them to make representations to the FCA. If the FCA decides to announce, firms would then have an additional 48 hours’ notice before the announcement is published. The new proposed period is intended to give firms time to consider whether they want or need to make an announcement themselves; (iii) the potential for an announcement to seriously disrupt public confidence in the financial system or the market has also been included as a new factor in the public interest test; and (iv) the FCA will not announce investigations which began before any changes to the policy come into effect. It was noted that the consultation closes on 17 February 2025.
	2. *FCA consultation on the regulatory framework for PISCES*. The Chair reported that on 17 December 2024 the FCA published its consultation on Private Intermittent Securities and Capital Exchange System (**PISCES**): Sandbox Arrangements. It was noted that the consultation paper contains the FCA's proposed rules and guidance for the PISCES Sandbox and Appendix 1 contains the draft PISCES Sourcebook. It was also noted that HMT intends to lay a statutory instrument that will provide the legal framework for the PISCES Sandbox before Parliament by May 2025 and that the FCA expects to publish its final rules on PISCES shortly thereafter. It was further noted that the FCA will publish further information in early 2025 for firms interested in applying to be a PISCES operator. The Chair noted that the Joint Prospectus and Listing Rules Working Group is preparing a response to this consultation, which closes on 17 February 2025, and therefore the final response will be added to the agenda for the meeting of the Committee to be held in March 2025.
	3. *Sanctions and dividends/other corporate actions*. Sarah Hawes led discussions on how sanctions are being dealt with in practice in respect of dividends and other corporate actions in advance of this year's AGM season and dividend round, particularly in light of the addition of the Russian National Settlement Depository to the UK's list of designated persons in summer 2024.
3. **Recent developments**

The Committee noted the following additional items in sections 5.1 to 5.9, with the Chair briefly commenting on the cases at items 5.9(a), (b) and (c).

* 1. **Company law**
		1. *The Companies and Limited Liability Partnerships (Protection and Disclosure of Information and Consequential Amendments) Regulations 2024*. The Companies and Limited Liability Partnerships (Protection and Disclosure of Information and Consequential Amendments) Regulations 2024 were made on 19 December 2024 and came into force on 27 January 2025 (see also the explanatory memorandum). No substantive changes have been made to the draft of these regulations that was laid before Parliament on 31 October 2024, which was noted at the meeting of the Committee held in November 2024.
		2. *The Information Sharing (Disclosure by the Registrar) Regulations 2024*. The Information Sharing (Disclosure by the Registrar) Regulations 2024 were made on 19 December 2024 and came into force on 20 December 2024 (see also the explanatory memorandum). No substantive changes have been made to the draft of these regulations that was laid before Parliament on 22 May 2024, which was noted at the meeting of the Committee held in May 2024.
		3. *EU directive upgrading company law for the digital era*. On 16 December 2024, the European Council announced that it has adopted an EU directive that expands and upgrades the use of digital tools and processes in company law. The directive was published in the Official Journal of the European Union on 10 January 2025 and enters into force 20 days later. Member states will then have 30 months to implement the provisions necessary to comply with the directive, which will apply 42 months after its entry into force.
		4. *The Companies (Accounts and Reports) (Amendment and Transitional Provision) Regulations 2024*. On 10 December 2024, the Companies (Accounts and Reports) (Amendment and Transitional Provision) Regulations 2024 and explanatory memorandum were laid before Parliament. These regulations amend legislation to: (i) increase by approximately 50% the turnover and balance sheet criteria that help determine whether a company or LLP is a micro-entity, small, medium-sized or large for the purpose of reporting and audit requirements; and (ii) remove duplicative, obsolete or low-value reporting requirements from the directors’ report. These regulations come into force on 6 April 2025 and the amendments they make have effect in relation to financial years beginning on or after 6 April 2025.
	2. **Corporate governance**
		1. *ISS Proxy Voting Guidelines 2025 updates*. On 17 December 2024, ISS Governance announced the publication of updates to its 2025 benchmark proxy voting policies, including for EMEA, along with an executive summary of the key updates and policy development process. On 9 January 2025, ISS Governance published an updated version of its UK and Ireland proxy voting guidelines, which includes the updates announced on 17 December 2024. The updated policies will generally be applied for shareholder meetings taking place on or after 1 February 2025.
		2. *DBT launches Fair Payment Code*. On 3 December 2024, DBT announced the launch of the Fair Payment Code to tackle late payments to SMEs.
		3. *FRC Annual Review of Corporate Governance Reporting*. On 26 November 2024, the FRC announced the publication of its Annual Review of Corporate Governance Reporting 2024.
	3. **Reporting and disclosure**
		1. *FRC thematic review of climate-related financial disclosures by AIM and large private companies*. On 21 January 2025, the FRC announced the publication of a thematic review of climate-related financial disclosures by AIM and large private companies.
		2. *UK Sustainability Reporting Standards*. On 18 December 2024, the FRC (in its role as the Secretariat to the UK Sustainability Disclosure Technical Advisory Committee (**TAC**)) announced the publication of the TAC’s final recommendations to the Secretary of State for Business and Trade. The TAC recommends the endorsement of the first two IFRS Sustainability Disclosure Standards for use in the UK to create UK Sustainability Reporting Standards.
		3. *Private Equity Annual Public Reports*. On 18 December 2024, the Private Equity Reporting Group announced the publication of its Annual Report of the Private Equity Reporting Group, Good Practice Reporting Guide for portfolio companies and Annual Report on the performance of portfolio companies.
		4. *Updated Walker Guidelines*. On 18 December 2024, the Private Equity Reporting Group announced the publication of an amended version of Part V of the Walker Guidelines, along with a feedback statement to PERG and the BVCA's consultation that was launched in July 2024.
		5. *EFRAG Voluntary Sustainability Reporting Standard for non-listed SMEs*. On 17 December 2024, EFRAG announced that it has delivered its technical advice on its Voluntary Sustainability Reporting Standard for non-listed SMEs. This is a voluntary standard for entities outside the scope of the CSRD.
	4. **Equity capital markets**
		1. *FCA policy statement on enhancing the National Storage Mechanism*. On 20 December 2024, the FCA announced the publication of its policy statement on enhancing the National Storage Mechanism (PS24/19) following its consultation that was launched in August 2024. In PS24/19, the FCA summarises the feedback received in response to its consultation, its longer-term plans for the NSM and its final rules and guidance, which will enable the FCA to make it easier for NSM users to find regulated information. The FCA amending instrument that makes changes to the DTRs is set out in Appendix 1 of PS24/19. A new FCA Technical Note, which contains guidance to Primary Information Providers in meeting their obligations to provide regulatory information, is set out in Appendix 2 of PS24/19. The changes made by the FCA amending instrument and the new FCA Technical Note will come into effect on 3 November 2025.
		2. *FCA PMB No. 53*. On 13 December 2024, the FCA published Primary Market Bulletin No. 53. In this edition, the FCA: (i) consults on proposed changes to guidance in its Knowledge Base for the listing regime following the implementation of the UKLRs (see GC24/6); (ii) provides feedback on its consultation in PMB No. 50 and subsequent changes to guidance for sponsors in its Knowledge Base (see FG24/7); and (iii) highlights its consultation to update FCA Handbook references to the UK Corporate Governance Code 2024 (see item 5.4(c)).
		3. *FCA Quarterly Consultation Paper No. 46*. On 6 December 2024, the FCA announced the publication of its Quarterly Consultation Paper No. 46 (CP24/26). Amongst other things, the FCA is proposing to update references to the new edition of the UK Corporate Governance Code in the FCA Handbook, including by amending the UKLRs and DTRs to reflect the new Code.
		4. *FCA fines Barclays £40 million*. On 25 November 2024, the FCA announced that it has fined Barclays £40 million for its failure to disclose certain arrangements with Qatari entities in 2008, which follows Barclays' decision to withdraw its referral of the FCA's planned action to the Upper Tribunal. The FCA has published its final notices to Barclays plc and Barclays Bank plc.
		5. *Pre-Emption Group Annual Monitoring Report*. On 22 November 2024, the Pre-Emption Group announced the publication of its Annual Monitoring Report.
	5. **MAR**
		1. *ESMA consultation on the draft technical advice concerning MAR and MiFID II SME GM*. On 12 December 2024, ESMA announced the publication of a consultation paper on draft technical advice concerning MAR and MiFID II SME GM. ESMA has launched this consultation to gather feedback following changes to MAR and MiFID II introduced by the EU Listing Act. The consultation closes on 13 February 2025 and ESMA will deliver its technical advice to the European Commission before the deadline set on 30 April 2025.
		2. *FCA fines a PDMR for MAR breaches*. On 27 November 2024, the FCA announced that it has fined András Sebők, former chief supply chain officer at Wizz Air, £123,500 for trading company shares during closed periods in breach of Article 19(11) MAR and for failing to disclose personal trades in breach of Article 19(1) MAR. The FCA has published its final notice to András Sebők.
	6. **Auditing and accounting**
		1. See item 5.1(d).
	7. **Takeovers**
		1. See item 5.9(e).
	8. **Miscellaneous**
		1. *Report on the NSIA 2021 Notifiable Acquisition Regulations*. On 19 December 2024, the Cabinet Office published a report on the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 in accordance with regulation 4 of these regulations.
		2. *The Financial Services and Markets Act 2023 (Addition of Relevant Enactments) Regulations 2024*. The Financial Services and Markets Act 2023 (Addition of Relevant Enactments) Regulations 2024 (a draft of which was noted at the meeting of the Committee held in November 2024) were made on 16 December 2024 and came into force on 17 December 2024 (see also the explanatory memorandum).
		3. *Government response to House of Lords Modern Slavery Act 2015 Committee's report*. On 16 December 2024, the Government published its response to the House of Lords Modern Slavery Act 2015 Committee's report on the Modern Slavery Act 2015.
		4. *Digital Markets, Competition and Consumers Act 2024 commencement regulations*. The Digital Markets, Competition and Consumers Act 2024 (Commencement No. 1 and Savings and Transitional Provisions) Regulations 2024 were made on 25 November 2024 and brought into force on 1 January 2025 certain provisions in the Digital Markets, Competition and Consumers Act 2024 (a correction slip has also been published).
	9. **Cases**
		1. *Aabar Holdings S.À.R.L. v Glencore plc and others [2024] EWHC 3046 (Comm)*.  In the context of an investor's claim against Glencore plc under sections 90 and 90A of FSMA 2000, the High Court held that the so-called "Shareholder Rule" that a company cannot assert privilege against its own shareholder, save in relation to documents that came into existence for the purpose of hostile litigation against that shareholder, does not exist under English law. This was despite submissions made on behalf of the claimant that this principle has existed in English law for over 135 years and has been approved by both the Court of Appeal and the Supreme Court. Picken J held that "*the Shareholder Rule is unjustifiable and should no longer be applied. Its original rationale no longer applies…; and the suggested joint interest privilege rationale is neither supported, at least in the shareholder/company context, by authority nor warranted as a matter of principle.*". Picken J commented that, if the Shareholder Rule does exist, it applies only where there is a joint interest in the privileged advice between the company and its shareholder, which must be decided on the facts of each case; it does not give the shareholder an absolute right to access any company legal advice whatever. Picken J also made obiter comments that if the rule does exist it would apply to beneficial owners of shares and it would extend to the access by shareholders in a parent company to privileged documents of subsidiary companies within the parent company's corporate group.
		2. *Adie & Anor v Ingenuity Digital Ltd [2024] EWHC 2902 (Ch)*. In relation to a dispute regarding the calculation of the deferred consideration payable under an SPA, the High Court dismissed the sellers' Part 8 claim for declarations that: (a) the buyer was not entitled to adjust the target's EBITDA by deducting the amount of two written-off invoices for the purposes of the deferred consideration calculation under the SPA, on the grounds that the buyer's sole remedy in relation to the customer dispute that led to the invoices being written off was under a separate specific indemnity clause in the SPA; but (b) if the buyer was entitled to make such adjustment, then it was not entitled also to make a claim under the indemnity in respect of the two written-off invoices. In dismissing the seller's claim, the judge concluded that the sellers' remedy in relation to (a) was to contest the adjustment under the expert determination procedure already provided for by the deferred consideration provisions in the SPA, and its remedy in relation to (b) was to contest any such indemnity claim in court proceedings. A 'no double recovery' clause that prohibited the buyer from recovering damages "*or otherwise obtain reimbursement or restitution*" more than once in respect of any indemnity claim was not applicable, as an adjustment of EBITDA cannot be said to be a claim for damages, reimbursement or restitution. Notwithstanding the inapplicability of such clause, insofar as the buyer's actions could lead to a double claim or double recovery and hence would plainly have been understood by both parties at the time of entry into the SPA as objectionable on any sensible basis (and thus require the court to hold that the SPA must be construed as prohibiting the buyer from exercising its right to make the EBITDA adjustment), it would still be possible for such objection to be addressed by relief being refused or reduced in relation to any indemnity claim.
		3. *Re KRF Services (UK) Ltd [2024] EWHC 2978 (Ch)*. The High Court affirmed the ratio in *Re Active Wear Ltd* [2022] EWHC 2340 (Ch) that Model Article 7(2), which provides that if the company has only one director and no provision of its articles requires it to have more than one director, then the sole director may take decisions without regard to the provisions of the Model Articles relating to directors' decision-making (including Model Article 11(2), which provides that the quorum for directors' meetings must never be less than two). The judge commented that if Model Article 11(2) were to be read as a requirement for more than one director (as was suggested in *Re Fore Fitness Investments Holdings Ltd, Hashmi v Lorimer-Wing* [2022] EWHC 191 (Ch)), Model Article 7(2) could never have effect, which is unlikely to have been the intended effect of the Model Articles. However, the judge disagreed with the obiter comments in *Active Wear* that Model Article 7(2) applies only where the company has never had more than one director (the judge in that case citing the apparent tension with Model Article 11(3), which provides that if the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than to appoint (or facilitate shareholders appointing) further directors) on the basis that the first condition for Model Article 7(2) to apply (i.e. that "*the company only has one director*") is expressed in the present tense.
		4. *LA Micro Group Inc v LA Micro Group (UK) Ltd and others [2024] UKSC 42*. The Supreme Court considered whether an agreement to transfer the beneficial interest in shares in a private company to the legal owner of those shares needs to be in writing and signed by each of those making the disposal in accordance with section 53(1)(c) of the Law of Property Act 1925 (**LPA**). The Supreme Court held that the failure to comply with the requirement for signed writing under section 53(1)(c) did not prevent an oral agreement to transfer the beneficial interest in shares in a private company to the legal owner of those shares from taking effect. Section 53(2) LPA provides that the requirement for signed writing in section 53(1)(c) does not affect the operation of a constructive trust. The Supreme Court held that the circumstances created by the oral agreement gave rise to the operation of a momentary purchaser-vendor constructive trust (i.e., a trust which typically arises whenever there is an agreement for the sale of property with regard to which the courts would grant specific performance) and, therefore, the disposition fell within the exception in section 53(2). The Supreme Court also clarified that, in its view, the requirements in section 53(1)(c) apply to equitable interests in personal property (including equitable interests in shares) as well as equitable interests in land.
		5. *Panel on Takeovers and Mergers v Balfour-Lynn and others [2024] EWHC 3044 (Ch)*. In a case brought by the Panel, the High Court granted an order to secure compliance to pay compensation to target shareholders, subsequent to rulings of the Panel and the Takeover Appeal Board, as the compensation ordered remained unpaid three months after the rulings. This is only the second time the Panel has sought an order under section 955 CA 2006, which empowers the Panel to apply to the court to secure compliance with its rulings. The High Court did not seek to rehear the substantive issues which underlay the Panel’s application for an order under s.955. In granting the orders it was observed that the court's discretion to grant a section 955 order is "*at large*" and is to be exercised "*with the public policy in mind ... to ensure that shareholders in an offeree company are treated fairly, are not denied an opportunity to decide on the merits of a takeover, and that shareholders of the same class in the offeree company are afforded equivalent treatment by an offeror*". Inability to pay should weigh very lightly in the balance of discretion. The rulings had related to a breach of Rule 9 of the Takeover Code, by members of an undisclosed concert party that had acquired control of the offeree company, in a context where many of the concert members were cold-shouldered for misleading the Panel in its enforcement investigation. It was the first time a compensation order had been made under section 954 CA 2006. Compensation was sought as an alternative to a Rule 9 offer by the concert party members, owing to the specific unusual circumstances of the offeree company; it had been liquidated in 2013 and removed from the Register of Companies in 2018.
1. **Any other business**
	1. *CLLS Annual Banquet*. The Chair noted that the CLLS Annual Banquet will be held at Mansion House on 25 February 2025 and reminded members of the Committee that bookings close on 18 February 2025. The Chair referred members of the Committee to the notice circulated to them by the Secretary on 16 January should they need any further information.
	2. *March 2025 Committee meeting.* The Chair also reminded members of the Committee that the meeting of the Committee to be held on 26 March 2025 will be in person and followed by a dinner. The Chair asked members of the Committee to let the Secretary know whether they are planning to attend the dinner.

7 March 2025