THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 327th meeting
at 9:00 a.m. on 29th May 2024

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*); Chrissy Findlay (*Pinsent Masons LLP*); Nicholas Holmes (*Ashurst LLP*); Chris Horton, (*Latham & Watkins LLP*); Victoria Kershaw (alternate for Ziyad Nassif, *Freshfields Bruckhaus Deringer LLP*); Vanessa Knapp (*Independent*); George Knighton (*Skadden Arps Slate Meagher & Flom (UK) LLP*); Kathy MacDonald (alternate for Jon Perry, *Norton Rose Fulbright LLP*); Stephen Mathews (*Allen & Overy LLP*); James Parkes (*CMS Cameron McKenna Nabarro Olswang LLP*); Ben Perry (*Sullivan & Cromwell LLP*); Caroline Rae (*Herbert Smith Freehills LLP*); Allan Taylor (*White and Case LLP*); Simon Tysoe (*Slaughter and May*); Liz Wall (*Allen & Overy LLP*); Adrian West (*Travers Smith LLP*); Peter Wilson (alternate for Allan Taylor, who could only attend part of the meeting, *White and Case LLP*); Simon Witty (*Davis Polk & Wardwell London LLP*); Simon Wood (*Addleshaw Goddard LLP*); Victoria Younghusband (*Charles Russell Speechlys LLP*); David Pudge (Chair, *Clifford Chance LLP*) and Gerard Lee (Acting Secretary, *Clifford Chance LLP*).

*Apologies*: Kevin Hart (*City of London Law Society*); Juliet McKean (Secretary, *Clifford Chance LLP*); Ziyad Nassif (*Freshfields Bruckhaus Deringer LLP*); Jon Perry (*Norton Rose Fulbright LLP*); Lucy Reeve (*Linklaters LLP*) and Matthew Rous (*City of London Law Society*).

1. **Approval of minutes**

A draft version of the minutes of the meeting held on 20 March 2024 was circulated to members on 12 April 2024. The Chair asked members to send any comments on the minutes to the Secretary by the middle of the following week, otherwise the minutes would be considered settled.

1. **Matters arising**
	1. *ECCTA identity verification and ACSPs*. The Chair reported that a draft of the Registrar (Identity Verification and Authorised Corporate Service Providers) Regulations 2024 was laid before Parliament on 22 May 2024 (see also the draft explanatory memorandum). The draft regulations make provisions about identity verification, authorised corporate service providers and unique identifiers. See also item 5.1(a).
	2. *Sponsor competence requirements*. The Chair reported that on 26 April 2024, the FCA published Handbook Notice No. 118, which sets out its response to feedback received on proposed changes to the sponsor competence requirements in CP 23/31, and Instrument FCA 2024/19 which amends LR 8. The Chair noted that this instrument came into force on 26 April 2024. Apart from minor clarificatory amendments and the inclusion of additional guidance, the instrument is in substantially the same form as the draft instrument in the consultation paper.
	3. *NSI Act*. The Chair reported that on 18 April 2024, the Cabinet Office published its response to the call for evidence on the National Security and Investment Act 2021. In response to the feedback received, the Government will focus on five areas between now and Autumn 2024: (i) publishing an updated statement on how the Secretary of State expects to exercise the call-in power (see below); (ii) publishing updated market guidance (see below); (iii) consulting on changes to the mandatory notification areas; (iv) considering certain technical exemptions to the mandatory notification requirement; and (v) making further improvements to the operation of the NSI system, including the NSI Notification Service.

The Chair also reported that on 21 May 2024, the Cabinet Office announced the publication of an updated section 3 statement (which has been laid before Parliament) and the May 2024 edition of Market Guidance. The new Market Guidance sets out, amongst other things, how the NSI Act can apply to outward direct investment. A foreword to the section 3 statement has also been published.

The Chair further reported that the Business and Trade Committee made a submission to the NSI Act call for evidence on 6 February 2024 and the Cabinet Office has published the Government’s response to the Business and Trade Committee’s submission.

* 1. *FCA consultation on publicising enforcement investigations*. The Chair noted that on 30 April 2024, the Committee submitted a response to the FCA consultation (CP24/2) on its Enforcement Guide and publicising enforcement investigations. The Committee's response endorses the response of the CLLS Regulatory Law Committee and makes additional submissions to emphasise the potential adverse impact of the FCA's proposed changes set out in its consultation for listed companies. On 9 May 2024, the House of Lords Financial Services Regulation Committee announced the launch of a call for evidence that seeks views on the proposals contained in the FCA’s consultation ahead of taking evidence from the FCA on these proposals. The call for evidence closes on 4 June 2024. In April, the Financial Services Regulation Committee wrote to the FCA to express a number of concerns about the FCA's proposals and asked the FCA not to take further steps to implement the changes until it has had the opportunity to seek evidence on the FCA's proposals and reach a final conclusion.
	2. *FCA consultation on listing regime reforms*. The Chair noted that the Joint Prospectus and Listing Rules Working Group, led by Nicholas Holmes, has submitted its responses to FCA CP23/31 (Primary Markets Effectiveness Review: Feedback to CP23/10 and detailed proposals for listing rules reforms), being: (i) a response to the tranche 1 draft rules and policy positions; (ii) a response to the tranche 2 draft rules; and (iii) a response to question 32 on the shell companies category.
	3. *HMT consultation on PISCES*. The Chair noted that on 3 May 2024,the CLLS Regulatory Law Committee and the Joint Prospectus and Listing Rules Working Group, led by Nicholas Holmes, submitted a joint response to HMT's consultation on PISCES.
1. **Discussions**
	1. *PCP 2024/1 – Companies to which the Takeover Code applies*. The Chair reported that on 24 April 2024, the Code Committee of the Takeover Panel published PCP 2024/1, which proposes a new jurisdictional framework that would narrow the scope of the companies to which the Takeover Code applies under section 3 of the Introduction to the Code, refocusing the application of the Code on companies which are registered and listed (or were recently listed) in the UK. The consultation closes on 31 July 2024. The Code Committee intends to publish a Response Statement setting out the final amendments to the Code in Autumn 2024. See also Panel Statement 2024/11. The Chair noted that the Joint CLLS/Law Society Takeovers Working Group is preparing a response to this consultation.
	2. *Takeover offers with class 1 conditions*. The Chair noted that the Joint CLLS/Law Society Takeovers Working Group is currently discussing a point that the Panel has raised in relation to bids with class 1 conditions where these straddle implementation of the changes to the listing regime and how these would be approached and whether there is a need for the JWG to publish short guidance on the point to ensure market participants are sufficiently aware of the issue.
	3. *MAR/disclosure requirements in respect of listed company transactions post-listing regime reforms.* The Committee has previously discussed what will be the likely impact of removing the Listing Rule requirement to announce what is currently a class 2 transaction post-listing regime reform given that MAR disclosure requirements will still apply and issuers may still have a desire to keep the market appropriately informed. The Chair led discussions on this issue and other similar MAR/disclosure issues in respect of listed company transactions post-listing regime reform e.g. insider lists. There was also discussion on whether the Committee should publish guidance.
	4. *Proposed new FCA board confirmation*. The Chair reported that as noted in item 5.4(c), the FCA published, as part of PMB No. 48, a draft version of the new Procedures, Systems and Controls Confirmation Form that it proposes to introduce for issuers to submit to the FCA at admission as described further in CP23/31. The proposed form requires the company's board to provide confirmation that the applicant has appropriate systems and controls in place to ensure it can comply with its continuing obligations and the Listing Principles. The FCA states in PMB No. 48 that it is not formally consulting on the content of the form but it is happy to receive feedback. Lucy Fergusson has drafted a short response on behalf of the Joint Prospectus and Listing Rules Working Group which provides feedback on the proposed form. The response also includes some minor drafting and typographical comments on the technical notes published for consultation.
	5. *Non-financial reporting consultation*. The Chair reported that on 16 May 2024, DBT announced the publication of a consultation on non-financial reporting. The consultation is seeking views on raising the employee threshold for medium-sized companies from not more than 250 employees to 500 employees and exempting eligible medium-sized companies from having to produce a strategic report. This follows the Government's announcement in March (see item 5.3(g)). The consultation closes on 27 June 2024. The Committee will be preparing a response to this consultation.
	6. *Reflections from the CLLS Chair*. The Chair reported that on 9 April 2024, the Secretary circulated to members of the Committee a link to a CLLS webpage that contain thoughts of Colin Passmore, Chair of the CLLS, on the long hours culture in the legal profession, the impact of this culture on people that work in the legal profession and what steps can be taken to address this issue. The CLLS is keen to hear the thoughts of Committee members so that those thoughts can be shared with senior management of member firms and individual members and also so that any issues can be raised with the Law Society, the SRA and other interested bodies.
2. **Recent developments**

The Committee noted the following additional items in sections 5.1 to 5.9 which time did not allow them to consider in the meeting, other than the Chair briefly commented on items 5.2(b) and 5.9(b).

* 1. **Company law**
		1. *Draft Registrar's rules on Companies House identity verification*. On 22 May 2024, Companies House published a draft version of the Registrar's rules on Companies House identity verification, which will be made in exercise of the power to be conferred by regulation 5 of the Registrar (Identity Verification and Authorised Corporate Service Providers) Regulations 2024 (see item 3.1). The purpose of these rules is to set out: (i) the contact information, personal information and types of evidence an applicant must provide when applying for verification of their identity; and (ii) the additional steps an applicant must take in order for their application to be determined.
		2. *Draft of the Companies Act 2006 (Recognition of Third Country Qualifications and Practical Training) (Amendment) Regulations 2024*. A draft of the Companies Act 2006 (Recognition of Third Country Qualifications and Practical Training) (Amendment) Regulations 2024 was laid before Parliament on 20 May 2024 (see also the draft explanatory memorandum). The draft regulations amend section 1221 of the Companies Act 2006 (**CA 2006**) and paragraph 9 of Schedule 11 to the CA 2006.
		3. *Regulations in respect of Registrar fees*. The Registrar of Companies and Register of Overseas Entities (Fees) (Amendment) Regulations 2024 were made on 1 April 2024 and came into force on 25 April 2024 (see also the explanatory memorandum). These regulations amend the Registrar of Companies (Fees) (Amendment) Regulations 2024 and the Registrar of Companies (Fees) (Register of Overseas Entities) Regulations 2024 in order to correct errors in relation to the dates contained in the transitional provisions for both instruments as well as some other defects.
		4. *ECCTA regulations*. The Economic Crime and Corporate Transparency Act 2023 (Financial Penalty) Regulations 2024 were made on 26 March 2024 and came into force on 2 May 2024 (see also the explanatory memorandum). No substantive changes have been made to the draft regulations published on 19 February 2024.

The Economic Crime and Corporate Transparency Act 2023 (Consequential, Supplementary and Incidental Provisions) Regulations 2024 were made on 20 March 2024 and came into force on 21 March 2024 (see also the explanatory memorandum). No changes have been made to the revised version of the draft regulations published on 1 February 2024.

A draft of the Companies and Limited Liability Partnerships (Protection and Disclosure of Information and Consequential Amendments) Regulations 2024 was laid before Parliament on 22 May 2024 (see also the draft explanatory memorandum). The draft regulations introduce the first part of the Economic Crime and Corporate Transparency Act 2023’s privacy reforms, bringing in measures to protect personal address information on the public register. The draft regulations are expressed to come into force on 30 September 2024.

A draft of the Information Sharing (Disclosure by the Registrar) Regulations 2024 was laid before Parliament on 22 May 2024 (see also the draft explanatory memorandum). The draft regulations enable the Registrar to disclose information to insolvency practitioners and other office holders engaged in insolvency proceedings to assist with specified purposes relating to insolvency and/or bankruptcy proceedings. The draft regulations are expressed to come into force on the day after the day on which they are made.

* 1. **Corporate governance**
		1. *CSDDD*. On 24 April 2024, the European Parliament announced that it has adopted legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. The directive needs to be formally endorsed by the Council, signed and published in the Official Journal of the European Union. It will enter into force twenty days later and member states will have two years to transpose the new rules into their national laws.
		2. *Legal opinion on nature-related risks and directors' duties*. On 13 March 2024, Pollination Law and the Commonwealth Climate and Law Initiative announced the publication of a "landmark" independent legal opinion that has found that directors need to consider their company's nature-related risks (which encompass, but are broader than, climate risks) as part of their duties under English company law. The legal opinion references an opinion given by George Bompas KC on 8 January 2024 which considers the extent to which directors and auditors need to consider whether "sustainability related information" must be disclosed in the financial reports to satisfy the true and fair requirement.
	2. **Reporting and disclosure**
		1. *UK Sustainability Reporting Standards*. On 16 May 2024, DBT published a framework document that sets out detail on the process to create UK Sustainability Reporting Standards by assessing and endorsing the global corporate reporting baseline of IFRS Sustainability Disclosure Standards. The framework document includes the terms of reference for the Technical Advisory Committee and the terms of reference for the Policy and Implementation Committee. On 16 May 2024, the Government also published its Sustainability Disclosure Requirements: Implementation Update 2024. This update states that the Government is aiming to make the UK Sustainability Reporting Standards available in Q1 2025.
		2. *Corrigendum to Commission Delegated Regulation on EU sustainability reporting standards*. On 19 April 2024, a corrigendum to Commission Delegated Regulation (EU) 2023/2772, which sets out the first set of EU sustainability reporting standards under the Corporate Sustainability Reporting Directive, was published in the Official Journal of the European Union.
		3. *Postponement of the European sustainability reporting standards*. The EU has approved the postponement of the adoption of sector-specific sustainability reporting standards for EU companies and general sustainability reporting standards for non-EU companies by two years to 30 June 2026. See the European Parliament's press release on 10 April 2024 and the Council of the EU's press release on 29 April 2024. The directive was published in the Official Journal of the European Union on 8 May 2024 and will enter into force on the twentieth day following this date.
		4. *TPT's final set of transition plan resources*. On 9 April 2024, the Transition Plan Taskforce announced the publication of its final set of transition plan resources, including sector-specific transition plan guidance and sector summary guidance.
		5. *Reporting on Payment Practices and Performance Regulations*. The Reporting on Payment Practices and Performance (Amendment) Regulations 2024 were made on 25 March 2024 and came into force on 5 April 2024 (see also the explanatory memorandum). No substantive changes have been made to the draft regulations published on 10 January 2024. On 21 May 2024, a draft of the Reporting on Payment Practices and Performance (Amendment) (No 2) Regulations 2024 was laid before Parliament (see also the draft explanatory memorandum). The draft regulations amend the Reporting on Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 to require qualifying companies and LLPs to publish information about their payment practices and policies with respect to retention clauses in any construction contracts that they have with suppliers. The draft regulations are expressed to come into force on 1 October 2024 and require additional information to be reported by qualifying companies and LLPs for financial years beginning on or after 1 January 2025.
		6. *FRC market study on UK sustainability assurance market*. On 21 March 2024, the FRC announced the launch of its first market study that examines the UK market for sustainability assurance services. The FRC has published an invitation to comment and a short information sheet. The closing date is 13 June 2024. The FRC is hosting two in-person roundtable discussions in June for interested stakeholders (see FRC invitation).
		7. *Non-financial reporting review*. On 18 March 2024, DBT published a document that summarises the responses it received to its call for evidence on non-financial reporting. As reported at the meeting of the Committee held in March, on 19 March 2024 the Government announced that it intends to lay legislation this summer to introduce the first set of changes to non-financial reporting as part of its commitment to make the non-financial reporting framework simpler. On 22 March 2024, the FRC announced that it welcomes the Government's plans to legislate in this area.
	3. **Equity capital markets**
		1. *ESMA position paper on EU capital markets*. On 22 May 2024, ESMA announced the publication of a position paper on building more effective and attractive capital markets in the EU.
		2. *FCA PMB No. 49*. On 22 May 2024, the FCA published Primary Market Bulletin 49. In this edition, the FCA: (i) reminds premium listed companies incorporated in the UK of the compliance framework around long-term incentive plans; (ii) reminds GDR issuers of their continuing obligations under the Listing Rules, DTRs and UK MAR; (iii) reminds issuers of their disclosure and filing requirements for annual financial reports including structured annual financial reporting obligations; (iv) highlights that it proposes to make a change to the Other Ethnic Group category in its board diversity rules to align it with the ONS Other Ethnic Group category description; and (v) provides an update on its consultation timeline on ISSB sustainability disclosure standards and transition plans based on the UK endorsement process (see item 5.3(a)). The FCA states that once the UK endorsement is completed in 2025 it will consult on amending its rules to move from TCFD to UK Sustainability Reporting Standards and on strengthening its expectations for transition plan disclosures with reference to the Transition Plan Taskforce (TPT) Disclosure Framework.
		3. *FCA PMB No. 48*. On 26 April 2024, the FCA published Primary Market Bulletin 48. In this edition, the FCA: (i) consults on proposed changes to a number of technical notes in the FCA Knowledge Base to reflect the proposed changes to the listing regime, including rules for sponsors. The consultation closes on 26 May 2024 (see also the GC24/2 webpage); (ii) provides a draft version of the new Procedures, Systems and Controls Confirmation Form that it proposes to introduce for issuers to submit to the FCA at admission as described further in CP23/31; (iii) confirms the final technical notes relating to sponsor competence, which coincides with the publication of the final rule changes to LR 8 following consultation in CP23/31 (see item 3.2); and (iv) provides information on the timing of notification to issuers of their expected new listing category should the changes proposed in CP 23/31 go ahead.
		4. *EU Listing Act*. On 24 April 2024, the European Parliament formally adopted at first reading a Regulation to amend the EU Prospectus Regulation, the EU Market Abuse Regulation and EU MiFIR and a Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an EU MTF.
		5. *FCA consultation on payment optionality for investment research*. On 10 April 2024, the FCA announced the publication of a consultation paper on payment optionality for investment research (CP24/7). The consultation closes on 5 June 2024.
		6. *UK's move to a T+1 settlement cycle*. On 28 March 2024, the Accelerated Settlement Taskforce published its report on whether the UK should move to a T+1 settlement cycle. The report recommends that the UK should aim to move to T+1 no later than the end of 2027. On 28 March 2024, the Government responded that it has accepted all the recommendations made in the report and, in line with the recommendations, has established a Technical Group to take forward the implementation of the UK's move to T+1 (see also the published terms of reference for the newly established Accelerated Settlement Technical Group).
		7. *ESMA feedback statement on call for evidence on shortening the securities settlement cycle*. On 21 March 2024, ESMA announced the publication of the feedback statement in relation to its call for evidence on shortening the securities settlement cycle. ESMA intends to deliver its final assessment to the European Parliament and to the Council before 17 January 2025.
	4. **MAR**
		1. See items 4.3 and 5.4(d).
	5. **Auditing and accounting**
		1. *The Accounting Standards (Prescribed Bodies) (United States of America and Japan) (Amendment) Regulations 2024*. The Accounting Standards (Prescribed Bodies) (United States of America and Japan) (Amendment) Regulations 2024 were made on 7 May 2024 and came into force on 8 May 2024 (see also the explanatory memorandum). No substantive changes have been made to the draft regulations published on 21 February 2024.
	6. **Takeovers**
		1. *Panel Bulletin 7: Offeror intention statements*. On 15 May 2024, the Takeover Panel Executive published Panel Bulletin 7 on offeror intention statements.
		2. *Panel Statement 2024/13*. On 30 April 2024, the Takeover Panel published Panel Statement 2024/13, which announces, amongst other things, the publication of a revised version of the Takeover Code reflecting amendments made by Instrument 2023/4 (Central counterparty recovery and resolution), Instrument 2024/1 (The Pensions and Lifetime Savings Association – see item 5.7(e) and Instrument 2024/2 (Document charges – see item 5.7(d)).
		3. *Panel Statement 2024/12*. On 30 April 2024, the Takeover Panel published Panel Statement 2024/12, which announces the publication of an amended Practice Statement 31 (Formal sale processes, private sale processes, strategic reviews and public searches for potential offerors), which sets out a new practice that has been adopted by the Panel Executive in respect of private sale processes. Practice Statement 31 has also been restructured and describes in more detail the different types of sale processes and the Executive’s approach to the relevant provisions of the Code in each case. A document detailing the amendments has also been published.
		4. *Panel Statement 2024/10*. On 18 April 2024, the Takeover Panel published Panel Statement 2024/10, which announces the publication of Instrument 2024/2. This Instrument makes minor amendments to the Takeover Code with effect from 30 April 2024. In summary, the Document Charges Section of the Code has been deleted and section 13 of the Introduction to the Code has been amended so as to require document charges to be payable by the persons and in the circumstances set out on the fees and charges page of the Takeover Panel’s website (rather than as set out in the Code).
		5. *Panel Statement 2024/9*. On 18 April 2024, the Takeover Panel published Panel Statement 2024/9, which announces the publication of Instrument 2024/1. This Instrument amends section 4(a) of the Introduction to the Code, with effect from 30 April 2024, so as to remove the reference to the PLSA following a request from the PLSA that it ceases to be a nominating body that is entitled to appoint members of the Takeover Panel.
	7. **Miscellaneous**
		1. *Smarter Regulation: Delivering a regulatory environment for innovation, investment and growth*. On 16 May 2024, DBT published a white paper entitled "Smarter Regulation: Delivering a regulatory environment for innovation, investment and growth" that sets out the Government's plan to improve the UK's regulatory landscape and encourage innovation, investment and economic growth. See also the executive summary.
		2. *Consultation on a draft of the Enterprise Act 2002 (Mergers Involving Newspaper Enterprises and Foreign Powers) Regulations 2024*. On 9 May 2024, the Department for Culture, Media and Sport announced the publication of a technical consultation on a draft of the Enterprise Act 2002 (Mergers Involving Newspaper Enterprises and Foreign Powers) Regulations 2024. On 26 March 2024, the Government brought forward amendments to the Digital Markets, Competition and Consumers Bill to create a new foreign state intervention regime for newspapers and periodic news magazines, which will ban foreign state ownership, control or influence over newspapers and news magazines. The consultation originally was to close on 23 May 2024, but the deadline for comments has been extended until 9 July 2024.
		3. *Digital Securities Sandbox*. On 3 April 2024, the Bank of England and the FCA jointly announced the publication of a consultation paper on their proposed approach to operating the Digital Securities Sandbox. See also the FCA webpage. The consultation closes on 29 May 2024.
		4. *Building a Smarter Financial Services Regulatory Framework for the UK*. On 21 March 2024, HMT published a policy paper entitled "Building a Smarter Financial Services Regulatory Framework for the UK: The next phase" that sets out the impact and progress of the programme so far and the Government’s approach on the next phase of the Smarter Regulatory Framework programme.
	8. **Cases**
		1. *Re Network International Holdings Plc [2024] 3 WLUK 387.* In this decision, Johnson J confirmed that the Courthad jurisdiction to extend the long-stop date of a Part 26 CA 2006 scheme provided that the Court approval of the extension of the scheme timetable was sought before the expiry of the long-stop date. The extension could not be sought after expiry. The Court expressly disagreed with the decision in *Re Emis.* The *Emis* decision had suggested that an extension to a scheme long-stop date could be granted retrospectively, after the original long-stop date had expired and the scheme had lapsed. Instead, in *Network International Holdings Plc*,Johnson J decided that, once the long-stop date had expired, such a scheme could never be effective and, in that event, the target company would need to re-start the scheme process. In both takeovers, the extension was to obtain outstanding regulatory change of control clearances.
		2. *Wells v Hornshaw and others [2024] EWHC 330 (Ch)*. Pursuant to an unfair prejudice petition, the High Court held that a minority shareholder had suffered unfair prejudice because the company's auditor failed to complete a valuation exercise using up to date financial information when valuing the minority shareholder's shares pursuant to a contractual exit mechanism in the shareholders' agreement – the auditor had not followed the instructions to ascertain the fair market value of the company as at the relevant valuation date. Section 994 CA 2006 is engaged where the "affairs of a company" are conducted in a manner that is unfairly prejudicial to the interests of a member. The High Court held that the auditor's conduct in carrying out the valuation exercise in order to facilitate an orderly transfer of the shares of an exiting shareholder can very fairly be characterised as conduct of the company's affairs. This decision was partly due to the fact that under the exit provisions the company itself would potentially be required to purchase the exiting shareholder's shares at the price determined by the auditor's valuation.
		3. *Onecom Group Limited v James Palmer [2024] EWHC 867 (Comm)*. The High Court dismissed a seller's application to strike out the buyer's warranty claims on the ground that they had been brought outside the contractually agreed limitation period. The SPA in question provided that any claim would be deemed to be withdrawn unless legal proceedings had been commenced within six months of the buyer giving written notice to the seller of the claim, unless the claim was based upon a liability which was contingent only or not capable of being quantified, in which case the limitation would only apply if legal proceedings had not been commenced within six months of the claim becoming an actual liability or capable of being quantified. A separate dispute had arisen between the buyer and the seller in relation to the earn-out consideration payable under the SPA and was eventually referred for expert determination in accordance with the earn-out mechanism in the SPA. The buyer argued that, as the damages arising from the (alleged) breaches of warranty needed to compensate it for the position it would have been in had the warranties been true, such damages were calculable on the basis of the difference between the price that it paid for the shares and their actual value. As the price paid for the shares was not determined until the earn-out dispute was resolved, the warranty claims were not capable of being quantified until the expert determination process had been completed, and thus the warranty claims were not time-barred as proceedings had been commenced within six months of that date. The High Court agreed and dismissed the seller's application on the basis that there was a risk of double-counting if the warranty claims preceded the resolution of the earn-out dispute, particularly given that the earn-out mechanism in the SPA did not include provisions allowing for any reduction depending on the outcome of any warranty claims.
		4. *Drax Smart Generation Holdco Limited v Scottish Power Retail Holdings Limited [2024] EWCA Civ 477*. The Court of Appeal allowed a buyer's appeal against the High Court's summary judgment dismissing its warranty claims on the basis that its notice of claim failed to satisfy the requirements of the notification clause in the SPA. The High Court had found that a requirement to provide "reasonable detail of the nature of the claim" requires the buyer to state how loss is alleged to have been suffered, not merely to identify (as the buyer had) that the claim is a claim in contract, for breaches of specific provisions, that it relates to breaches arising out of the relevant facts and a statement of the remedy. The Court of Appeal disagreed, pointing out that the purpose of a notification clause is to provide a contractual limitation period allowing the parties to "close their books on the transaction" if no notice is given by the deadline, and that such clauses "should not become a technical minefield to be navigated". The judge remarked that the courts should not interpret notification clauses as imposing requirements which serve no real commercial purpose, and that "it needs to be remembered that such clauses are essentially exclusion clauses", with ambiguities resolved by narrow construction so that remedies provided by the law for breach of important contractual obligations are not cut down without using clear words having that effect. The High Court had also found that, in order to satisfy the requirement for the notice to detail "the Buyer's calculation of the Loss thereby alleged to have been suffered", the buyer would have had to explain that the calculation of its loss was the difference between the warranted value of the shares in the target company, and the actual value of the shares (instead, the buyer's notice of claim had merely identified particular heads and items of loss which the target company would suffer). Again, the Court of Appeal disagreed, finding that the clause merely required a genuine estimate to be put forward by the buyer in good faith, and if the basis of such calculation was legally unsound, the seller could have obtained whatever evidence it needed in order to refute the way the claim was put.
		5. *RTI Ltd v MUR Shipping BV [2024] UKSC 18*. The Supreme Court found that an affected party was not required by the exercise of reasonable endeavours to accept an offer of non-contractual performance by its counterparty in order to circumvent the effect of a force majeure clause. The contract in question required payments to be made by the counterparty to the affected party in US dollars. Following the imposition of US sanctions, the affected party sought to rely on the force majeure clause, which provided that a force majeure event was (amongst other things) one that cannot be overcome by reasonable endeavours from the affected party. The counterparty argued that the imposition of the sanctions could have been overcome by reasonable endeavours from the affected party if it accepted payments in euros instead of US dollars. Finding in favour of the counterparty, the majority view of the Court of Appeal was that the issue did not concern reasonable endeavours or force majeure clauses in general; rather each such clause must be considered on its own terms, and, on the facts, payment in euros would have "overcome" the event without any exertion or detriment on the part of the affected party. The Supreme Court found that the Court of Appeal was wrong to approach the case as if it simply involved the interpretation of the reasonable endeavours proviso in this contract and not address the issue as a matter of principle, given that reasonable endeavours provisos are commonly found in force majeure clauses. The Supreme Court set out several principles that it said provided good reasons for allowing the appeal, including: (i) the object of reasonable endeavours provisos in this context is to maintain contractual performance, not to substitute a different performance; (ii) the fundamental principle of freedom of contract, which includes freedom not to accept an offer of non-contractual performance of a contract; (iii) the need for clear words to forgo valuable contractual rights (in that as the affected party had a contractual right to be paid in US dollars, it had a valuable contractual right to refuse to accept payment in any other currency); and (iv) the importance of certainty in commercial contracts.
		6. *Lifestyle Equities CV and another v Ahmed and another [2024] UKSC 17*. The Supreme Court had to determine whether company directors could be liable as accessories for causing a company to commit a strict liability tort and whether such liability is also strict or dependent on knowledge. The Supreme Court reasoned that there is no general principle of English law which exempts a director from ordinary principles of tort liability; the same principles govern their liability, whether as primary infringers or accessories, as apply to anyone else. The Supreme Court confirmed that a person who causes another person to commit a tort will only be jointly liable as an accessory for the tort if they have knowledge of the essential facts which make the act done wrongful, even if the tort is one of strict liability - this is so whether the claim is based on procuring the tort or assisting another to commit the tort pursuant to a common design (the two distinct bases for imposing accessory liability). The Supreme Court held that, on the facts of the case, the defendant directors of the company that had infringed Lifestyle Equities trademark were not jointly liable for the company’s infringements as they were found not to have the knowledge required for accessory liability to arise.

4 July 2024