THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 336th meeting
at 9:00 a.m. on 26th November 2025

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## 1. Welcome and apologies

*In attendance*: Paul Arathoon (*Charles Russell Speechlys LLP*); Adam Bogdanor (*Bryan Cave Leighton Paisner LLP*); Tom Brassington (*Hogan Lovells International LLP*); Jamie Corner (*Simmons & Simmons LLP*); Lucy Fergusson (*Linklaters LLP*); Nicholas Holmes (*Pinsent Masons LLP*); James Innes (*Latham & Watkins LLP*); Craig Kelly (alternate, *Skadden Arps Slate Meagher & Flom (UK) LLP*); Marianna Kennedy (*Ashurst LLP*); Vanessa Knapp (*Independent*); Stephen Mathews (*A&O Shearman LLP*); Juliet McKean (Secretary, *Clifford Chance LLP*); Ziyad Nassif (*Freshfields 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*); Caroline Rae (*Herbert Smith Freehills Kramer LLP*); Lucy Reeve (*Chair of the Law Society Company Law Committee*); Allan Taylor (*White and Case LLP*); Andrew Telling (alternate, *Taylor Wessing LLP*); Simon Tysoe (*Slaughter and May*); Simon Valls (*Clifford Chance LLP*); Liz Wall (*A&O Shearman LLP*); Adrian West (*Travers Smith LLP*); Simon Witty (*Davis Polk & Wardwell London LLP*); and Victoria Younghusband (*M.B. Kemp LLP*).

*Apologies*: Richard Burrows (*Macfarlanes LLP*); Andrew Edge (*Taylor Wessing LLP*); Kevin Hart (*City of London Law Society*); Simon Toms (*Skadden Arps Slate Meagher & Flom (UK) LLP*); and Simon Wood (*Addleshaw Goddard LLP*).

## 2. Approval of minutes

A draft version of the minutes of the meeting held on 24 September 2025 was circulated to members on 10 October 2025. The Chair asked members to send any comments on the minutes to the Secretary by the end of this week, otherwise the minutes would be considered settled.

## 3. Matters arising

3.1 *Dematerialisation Market Action Taskforce*. The Chair reported that, on 9 October 2025, HMT announced that the Government has appointed Mark Austin CBE to establish and chair the Dematerialisation Market Action Taskforce (**DEMAT**). It was noted that terms of reference that set out DEMAT's objectives and governance structure have been published. The Chair also noted that, on 12 November 2025, Euroclear announced the publication of a research report which highlights that about 4.7 million people in the UK are still holding paper share certificates. It was noted that the press release states that the research findings reveal that the UK risks falling behind unless urgent steps are taken to support the transition and reach those still holding paper shares (noting that the Digitisation

Taskforce's final report recommends the removal of paper share certificates by the end of 2027 in favour of fully digitised shareholdings).

3.2 *DBT consultation on late payments*. The Chair noted that, on 16 October 2025, a joint working group of the Committee and the Law Society Company Law Committee submitted a response to DBT's consultation on late payments: tackling poor payment practices.

3.3 *FCA consultation on notifying purchases of own securities under UKLR*. The Chair noted that, on 15 October 2025, the Committee submitted a response to Chapter 7 (Notifying purchases of own securities under UKLR) of FCA Quarterly Consultation Paper CP25/24. The Chair noted that the response strongly supports the alignment of disclosure obligations for share buybacks under the UKLRs and the MAR regime, moving to weekly, rather than daily, notifications.

3.4 *FSG briefing to the Mayoralty and Corporation of London*. The Chair noted that the 2025 briefing from the Financial Services Group of Livery Companies to the Mayoralty and Corporation of London, along with an Asset Register, a Risk Matrix, an Opportunity Matrix and a document from the Lady Mayor, had been circulated to members of the Committee with the agenda for the meeting. The Chair noted that the paper is aligned with the Government's and the City's growth agenda and the idea of trying to ensure that the benefits of the UK in terms of professional services and a place to establish business is highlighted to the Government, regulators and other senior figures. The Chair also noted that the FSG has identified five risks that need urgent attention: (i) cyber threat and financial crime — which is high on the agenda for all businesses; (ii) AI model and slow adoption risk; (iii) stifled growth prospects — with concerns over slow funding flows, LSE decline and restrictive R&D tax rules; (iv) people and business migration and operating costs rises; and (v) uncoordinated regulation — with a need for more joined-up, growth-focused regulatory approaches, which aligns with recent submissions of the Committee to the Government and regulatory bodies when responding to their consultations.

## 4. Discussions

4.1 *FCA/CLLS CLC Liaison Committee meeting*. James Inness provided an update on the meeting held on 11 November 2025.

4.2 *FCA PMB 58*. The Chair reported that, on 17 October 2025, the FCA published Primary Market Bulletin 58. It was noted that in this edition the FCA: (i) provides important information on submitting documents and working with the FCA in the period before the new POATRs regime is implemented; (ii) consults on four new guidance notes, proposed changes to 42 existing guidance notes and deleting seven guidance notes in its Knowledge Base in anticipation of the new POATRs regime (see GC25/3); and (iii) additionally gives feedback on its consultation in PMB 57 and finalises two technical notes (FG25/6). It was also noted that, on 31 October 2025, the FCA published updated versions of PMB 58 and GC25/3 to correct clerical errors identified in some of the draft procedural and technical notes published for consultation. It was further noted that the Joint Prospectus and Listing Rules Working Group and the Joint CLLS/Law Society Takeovers Working Group are liaising on a response to the consultation. See also items 5.4(c) and (d) on the prospectus regime reforms.

4.3 *Protected forward looking statements in prospectuses*. Nicholas Holmes provided an update on a call held by the Joint Prospectus and Listing Rules Working Group on 25 November

2025 to discuss protected forward looking statements and in particular the form of accompanying statements, both general and specific, to be included in prospectuses.

4.4 *GC100 Draft Guidance for Virtual Meetings of Shareholders – December 2025*. The Chair reported that the GC100 has been engaging with the Investment Association on AGM reform and that following this engagement, the GC100 intends to publish industry led best practice guidance for virtual meetings. The Chair noted that the GC100 has asked the Committee to provide high-level feedback on the draft guidance and whether the Committee would be willing to endorse the guidance. It was noted that the Secretary had circulated the draft guidance to members of the Committee on 17 October 2025.

4.5 *Modernisation of Corporate Reporting*. The Chair reported that, on 21 October 2025, the Government announced that it plans to modernise and simplify the UK's corporate reporting framework. It was noted that the written ministerial statement states that the Government aims to bring forward legislation as quickly as possible to: (i) exempt most medium-sized private companies from the need to produce a strategic report as part of their annual report and accounts; (ii) exempt wholly owned subsidiaries from the need to produce a strategic report where their disclosure is included in the annual report of a UK parent; and (iii) remove the requirement for any company to produce a directors' report as part of their annual report and accounts. It was also noted that the statement announces the plan for a broader consultation on 'Modernisation of Corporate Reporting' in 2026, which will cover the whole of the annual report and accounts and will include reforms on '*remuneration reporting, corporate governance reporting, the financial reporting framework as well as improving regulatory alignment across reporting frameworks and consider how corporate reporting should function in a digital age*'. The Chair reported that a joint working group with the Law Society Company Law Committee has been formed to engage with DBT on the legislative changes (if possible) and the consultation in 2026. It was noted that these reforms were announced along with the Government's Regulation Action Plan Update (see item 5.8(d) below).

4.6 *SCRR recommendation on power to reduce notice period for shareholder meetings (other than AGMs)*. Chair provided an update on a call with DBT held on 13 November 2025 to discuss DBT's implementation of recommendation 13 in the SCRR i.e., that the Secretary of State should be delegated authority in statute to reduce the minimum notice period for shareholder meetings that are not AGMs from 14 clear days to seven clear days at the appropriate time.

4.7 *CLLS Financial Law Committee note on 'face value' requirement in section 1(2)(a) LP(MP)A 1989*. The Chair noted that the CLLS Financial Law Committee has prepared a note on the 'face value' requirement for deeds in s.1(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1989 (**LP(MP)A 1989**), in light of *obiter* comments made in *Macdonald Hotels Ltd v Bank of Scotland PLC*, which was discussed at the meeting of the Committee held in March 2025. It was noted that the Secretary had circulated the note to members of the Committee on 4 November 2025. Having considered the contents of the note, members of the Committee agreed that the Committee should endorse the note. It was noted that, following the Committee's endorsement, the note would be published by the CLLS Financial Law Committee.

## 5. 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 5.1(c), 5.2(d) and 5.2(f).

### 5.1 Company law

*(a)* *Updated DBT non-statutory guidance on people with significant control over UK legal entities*. On 19 November 2025, DBT published updated non-statutory guidance on the people with significant control regime (see updated guidance in DBT's collection of guidance on people with significant control requirements).

*(b)* *Companies House fees changing from 1 February 2026*. On 30 October 2025, Companies House announced that it fees will be changing from 1 February 2026. Companies House published a full list of the fees that are changing on 1 February 2026. The Registrar of Companies (Fees) (Amendment) Regulations 2025 were made on 28 October 2025 and come into force on 1 February 2026 (see also the explanatory memorandum).

(c) *DBT report on director perceptions of section 172 of the Companies Act*. On 24 October 2025, DBT published a report on the findings of research (conducted by Ipsos) with executive directors and company secretaries of large companies to understand their perceptions of s.172 CA 2006, the introduction of the requirement to publish a s.172(1) statement in their annual report and accounts and the impact that these have had on company decision making.

(d) *Companies House strategy 2025 to 2030*. On 13 October 2025, Companies House announced the publication of its strategy for 2025 to 2030 which outlines its five year vision and objectives to support economic growth and address economic crime.

(e) *The Economic Crime and Corporate Transparency Act 2023 regulations*. The following ECCTA 2023 regulations have been made:

(i) The Limited Liability Partnerships (Application and Modification of Company Law) Regulations 2025 and explanatory memorandum (made on 18 September 2025 - a draft of which was noted at the meeting of the Committee held in July 2025);

(ii) The Register of People with Significant Control (Amendment) Regulations 2025 and explanatory memorandum (made on 18 September 2025 - a draft of which was noted at the meeting of the Committee held in July 2025);

(iii) The Economic Crime and Corporate Transparency Act 2023 (Consequential, Incidental and Miscellaneous Provisions) Regulations 2025 and explanatory memorandum (made on 18 September 2025 - a draft of which was noted at the meeting of the Committee held in July 2025);

(iv) The Companies and Limited Liability Partnerships (Annotations, Application and Modification of Company Law and Consequential Amendments) Regulations 2025 (made on 22 October 2025); and

(v) The Economic Crime and Corporate Transparency Act 2023 (Commencement No. 6 and Transitional Provisions) Regulations 2025 (made on 22 October 2025).

As previously announced by Companies House in August 2025, the following ECCTA reforms came into force on 18 November 2025: (i) the mandatory identity verification regime for directors, PSCs and individual LLP members; and (ii) the abolition of certain statutory registers. The regulations in item 5.1(e)(iv) above contain a new duty on the registrar to annotate the public register where an individual's identity is verified to highlight their identity verification status. On 3 November 2025, Companies House announced that more than 1 million individuals had already verified their identity since it rolled out its identity verification service on a voluntary basis in April 2025.

In addition, on 17 November 2025, Companies House published updated guidance, forms (as well as new forms) and Registrar's Rules to reflect the coming into force of these ECCTA reforms as well as new guidance that sets out its approach to non-compliance with mandatory identity verification and new guidance on providing identity verification details for a PSC.

## 5.2 Corporate governance

(a) *The IA's Principles of Remuneration*. On 13 November 2025, the Investment Association announced that it has reconfirmed its flexible approach to executive payment in its Principles of Remuneration for 2026, maintaining that companies must also provide tailored rationales for pay structures. In this year's letter from the IA to Remuneration Committee Chairs, the IA states that it is not making additional changes to its Principles of Remuneration for 2026, therefore, the letter focuses on a small number of areas where investors feel the implementation of the new Principles can be further improved.

(b) *FRC Annual Review of Corporate Governance Reporting*. On 13 November 2025, the FRC announced the publication of its Annual Review of Corporate Governance Reporting.

(c) *FRC updates guidance on NED remuneration*. On 5 November 2025, the FRC announced the publication of updated guidance on the remuneration of non-executive directors as part of its regular updates to the guidance supporting the UK Corporate Governance Code 2024. The guidance makes clear that the principle of comply or explain provides companies with flexibility to structure NED remuneration. This update follows the Government's announcement, in the written ministerial statement on 'Regulation Action Plan Update, and Modernisation of Corporate Reporting' (see minute 4.5 above), that the FRC will clarify the UK Corporate Governance Code guidance to make clear that the payment of NEDs in shares is appropriate, enhancing the ability of UK listed companies to attract the highest calibre of talent on the global stage. This action is set out in the Government's 'Regulation Action Plan – Progress Update and Next Steps' (see item 5.8(d) below).

(d) *ISS Governance 2026 benchmark voting policy comment period*. On 30 October 2025, ISS Governance announced the launch of its open comment period on proposed changes to its benchmark voting policies for 2026. The comment period closed on 11 November 2025. For UK and Ireland, the proposed policy change is to establish a clear definition of 'in-person meetings' to address recent practices by some companies seeking to introduce more restrictive in-person shareholder meetings, with potential to diminish shareholder participation and restrict opportunities for engagement with the board.

(e) *FRC UK Stewardship Code 2026 guidance*. On 30 October 2025, the FRC announced the publication of its final guidance to the UK Stewardship Code 2026. The FRC has made amendments and finalised the guidance following stakeholder feedback to the call for comments on the draft guidance published in June 2025. The guidance is optional and not prescriptive and has been published to assist applicants to report well against the Stewardship Code 2026. In addition, on 11 November 2025, the FRC announced the publication of a report to support signatories as they prepare to apply to the updated UK Stewardship Code, which takes effect from 1 January 2026.

(f) *IA's Public Register*. On 21 October 2025, the Government announced in the written ministerial statement on 'Regulation Action Plan Update, and Modernisation of Corporate Reporting' that it will commission the Investment Association to discontinue its public register which tracks shareholder dissent, thereby removing duplication with UK Corporate Governance Code requirements (see also the IA's press release). This action is set out in the Government's 'Regulation Action Plan – Progress Update and Next Steps' (see item 5.8(d) below).

## 5.3 Reporting and disclosure

(a) *FRC thematic review on reporting by the UK's smaller listed companies*. On 19 November 2025, the FRC announced the publication of a thematic review on reporting by the UK's smaller listed companies, which contains practical insights to help smaller listed companies improve the quality of their corporate reporting and make the most of their resources.

(b) *MEPs vote in favour of simplified sustainability and due diligence rules*. On 13 November 2025, the European Parliament announced that it had adopted its negotiating mandate on the European Commission's proposal for an Omnibus directive simplifying sustainability reporting and due diligence requirements introduced by the CSRD and CSDDD.

(c) *Postponement of certain EU sustainability reporting standards (ESRS) requirements.* On 10 November 2025, the Commission Delegated Regulation (EU) 2025/1416 amending Delegated Regulation (EU) 2023/2772 as regards the postponement of the date of application of the disclosure requirements of certain undertakings (the **Quick Fix Regulation**) was published in the Official Journal. It entered into force on 13 November 2025. This follows the European Commission's adoption of the proposal for the Quick Fix Regulation in July 2025. The Regulation applies retrospectively to financial years beginning on or after 1 January 2025.

(d) *FRC discussion paper on future technical development of UK digital reporting taxonomies*. On 7 November 2025, the FRC announced the publication of a discussion paper on proposed technical changes to the UK XBRL Taxonomy Suite. The paper outlines a series of proposed architectural design changes aimed at improving the usability, scalability and technical integrity of taxonomies. The FRC encourages all interested parties to submit their responses by 11 January 2026.

(e) *The Companies (Directors' Report) (Payment Reporting) Regulations 2025*. The Companies (Directors' Report) (Payment Reporting) Regulations 2025, a draft of which was noted at the meeting of the Committee held in September 2025, were made on 30 October 2025 and come into force on 1 January 2026 (see also the explanatory memorandum). These regulations have effect in respect of a company's financial year beginning on or after 1 January 2026.

(f) *TNFD guidance on nature in transition plans*. On 4 November 2025, the Taskforce on Nature-related Financial Disclosures (**TNFD**) announced the publication of its guidance on nature in transition plans.

(g) *FRC corporate reporting insights*. On 21 October 2025, the FRC announced the publication of two thematic reviews designed to enhance the quality of, and provide insights into, company reporting in respect of investment companies and share-based payment arrangements.

(h) *FRC Annual Review of Corporate Reporting*. On 30 September 2025, the FRC announced the publication of its Annual Review of Corporate Reporting 2024/25.

**5.4 Equity capital markets**

(a) *JP Jenkins approved as second PISCES market operator*. On 18 November 2025, the FCA announced that it has approved JP Jenkins to operate a PISCES platform.

(b) *FCA PMB 59*. On 23 October 2025, the FCA published Primary Market Bulletin 59. In this edition, amongst other things, the FCA: (i) provides details of, and findings from, a review of issuers' compliance with the requirements under Article 17.4 UK MAR, which allows issuers to delay public disclosure of inside information under certain conditions; (ii) reminds listed companies of their obligations under the UKLRs, DTRs and UK MAR where they are planning to acquire bitcoin or other cryptoassets for the purpose of long-term value appreciation as part of their broader treasury management strategy; and (iii) highlights key changes relating to the submission of disclosures to the National Storage Mechanism via the Electronic Submission System or a Primary Information Provider.

(c) *The Public Offers and Admissions to Trading (Amendment and Consequential and Transitional Provisions) Regulations 2025*. The Public Offers and Admissions to Trading (Amendment and Consequential and Transitional Provisions) Regulations 2025 were made on 13 October 2025 (see also the explanatory memorandum). Amongst other things, these regulations make consequential amendments arising out of the commencement of provisions in the Public Offers and Admissions to Trading Regulations 2024 and set out transitional provisions in relation to the new regulated activity introduced by the POATRs.

(d) *The Financial Services and Markets Act 2023 (Commencement No. 11 and Saving Provisions) Regulations 2025*. The Financial Services and Markets Act 2023 (Commencement No. 11 and Saving Provisions) Regulations 2025 were made on 14 October 2025. Amongst other things, these regulations revoke the UK Prospectus Regulation on 19 January 2026.

## 5.5 MAR

(a) *FCA bans and fines advisor for insider dealing*. On 23 October 2025, the FCA announced it has fined an advisor £100,281 for insider dealing and banned him from working for UK financial services (see the FCA final notice).

(b) See also item 5.4(b) above.

## 5.6 Auditing and accounting

(a) *FRC audit quality review*. On 20 October 2025, the FRC announced the publication of a report that sets out the key findings and good practice the FRC has identified in the 2023/4 and 2024/5 inspection cycles related to the audits of the twelve largest audit firms.

## 5.7 Takeovers

(a) See minute 4.2 above.

## 5.8 Miscellaneous

(a) *Mergers Involving Newspaper Enterprises and Foreign Powers*. On 30 October 2025, DCMS published its response to the consultation on the draft Enterprise Act 2002 (Mergers Involving Newspaper Enterprises and Foreign Powers) (No.2) Regulations 2025 (see also the draft regulations and the draft explanatory memorandum).

(b) *Updated CMA guidance on jurisdiction and procedure (CMA2) and merger notice template*. On 28 October 2025, the CMA published updated versions of its guidance on jurisdiction and procedure (CMA2) and its merger notice template to reflect changes to the CMA's mergers process, embedding its '4Ps' framework (pace, predictability, process and proportionality). The CMA also published a summary of the responses to its consultation on the draft revised guidance and draft revised merger notice.

(c) *Regulation of ESG ratings providers*. On 27 October 2025, a draft of The Financial Services and Markets Act 2000 (Regulated Activities) (ESG Ratings) Order 2025 was published (see also the draft explanatory memorandum). This order brings the provision of an ESG rating into regulation under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (**RAO**) by making it a specified kind of activity, when that rating is likely to influence a decision to make an investment specified in Part 3 of the RAO. This change will require providers of an ESG rating to be authorised and supervised by the FCA, which announced that it welcomes legislation to bring ESG ratings providers into its remit.

(d) *Regulation Action Plan – Progress Update and Next Steps*. On 21 October 2025, the Chancellor announced the publication of the 'Regulation Action Plan – Progress Update and Next Steps', which provides an update on the progress the Government has made to deliver the key actions set out in its Regulation Action Plan published in March 2025 and the next steps it will take to upgrade the UK regulatory system. This publication is supplemented by a technical annex which sets out the Government's approach to calculating administrative burdens and a progress update which sets out key regulators' progress in delivering the commitments announced in March 2025. See actions set out in items 5.2(c) and 5.2(f) above.

## 5.9 Cases

(a) *Kulkarni v Gwent Holdings Ltd [2025] EWCA Civ 1206*. The Court of Appeal has dismissed an appeal against the High Court's ruling that a breach of contract that is repudiatory in nature at common law can still be otherwise capable of remedy within the meaning of a contractual provision. The defendant in this case had admitted repudiatory breaches of an SHA, but disputed the claimant's argument that such breaches had triggered the compulsory transfer provisions under the SHA, which provided that a transfer notice was deemed to be served in the event of a shareholder committing a material breach which, <u>if capable of remedy</u>, has not been so remedied within 10 business days of the board serving notice to remedy the breach. The defendant successfully argued that as its breach was capable of remedy and the board had failed to issue any such notice, the transfer notice could not be deemed to have been served. The judge rejected the claimant's submission that repudiatory breaches are by their nature irremediable for all purposes and observed that had they so intended, the parties could have stated in the contract that repudiatory breach was to be considered irremediable, but they did not do so. The court found that the case law shows that, when determining whether a breach of contract is "*capable of remedy*", a "*practical rather than technical*" approach is normally to be adopted, with a view to putting matters right <u>for the future</u>, rather than obviating or nullifying the effect of the breach so that any damage already done is in some way made good.

(b) *Spill Bidco Ltd v Wishart [2025] EWHC 2513 (Comm)*. The High Court has found that the restrictive covenants in an SPA and investment agreement under which the seller covenanted that he would not be "*engaged or be concerned or interested in any business…which competes with the* [business of the target company]" encompassed lending funds (or other assets) to a competing business. The judge observed that the issue of construction depended on the parameters of the word 'concerned', since 'engagement' in a business involves carrying on or transacting the business and being 'interested' in the business generally connotes having a proprietary interest in it. In making its assessment, the court found that the covenantor's activities are to be assessed as a whole, in that a covenantor who makes a loan in one payment without otherwise making any contribution to the business is to be assessed differently from a covenantor who makes several payments or provides assistance in addition to the loan. However, having reviewed a series of authorities the judge was satisfied that "*the short answer*" is that a person who lends funds for application in a business is at least capable of being 'concerned' within the meaning of the restrictive covenants.

(c) *(1) RMK Maritime (Europe) Ltd (2) RMK Maritime Capital LLC v CMB.Tech NV (previously known as Euronav N.V.) [2025] EWHC 2739 (Comm)*. It is rare to see a claim in restitution for *quantum meruit*, like this one, between commercial contracting parties alleging that the defendant was unjustly enriched by receiving services outside the contractual scope of work. The contract was an advisory services engagement in relation to a proposed merger with a named party. The court dismissed the claim, finding that the wider services provided by the claimant (such as deal structuring, negotiation support and due diligence co-ordination) fell within the agreed contractual scope of work. The court interpreted the contract to cover the period through to completion, with the fact that fees were expressly payable to RMK up to closing being consistent with it having a continuing role under the contract. In addition, as the agreement contained provisions requiring any expansion of scope to be agreed in writing by both parties, the court found this reflected a consensus that a precondition to additional services was written agreement. This provision displaced the possibility of restitution for unjust enrichment since allowing this would displace the terms of the contract.

(d) *R (CIT, anonymised company) v The Financial Conduct Authority [2025] EWHC 2614 (Admin)*. In a decision which may be supplemented once an outstanding application for permission to appeal has been decided, Fordham J. dismissed a firm's judicial review of an FCA decision to publicise an investigation into the firm (including naming it). The case marks the first publicised challenge to the FCA's use of its "*exceptional circumstances*" test since the FCA dropped its proposal to replace this with a broader public interest test, and revised its policy on publication in ENFG 4.1.1G to 4.1.9G of its Enforcement Guide. Three points emerge about the correct interpretation of the test. First, "*exceptional*" in the context of the "*exceptional circumstances*" test, means "*an exceptional investigation*" rather than exceptional when compared with the circumstances of regulated firms in general. Secondly, the desirability of making an announcement which names a firm is to be judged against the two alternatives open to the FCA, which are to make no announcement, which is the usual baseline position under ENFG 4.1.1G, or to make an announcement without identifying the firm under ENFG 4.1.8G. Thirdly, the FCA's consideration of "*exceptionality*" in this context requires the FCA to consider reasons relevant specifically to naming, in addition to reasons relevant to announcing.

(e) *Cable & Wireless Jamaica Ltd v Abrahams [2025] UKPC 44*. This Privy Council decision agrees with Lord Millett's analysis of the principles applicable to the determination of class composition on a scheme in the leading authority on this subject, *UDL v Argos Engineering & Heavy Industries Co Ltd v Li Oi Lin [2001] HKCFA 19*. This includes that it is the responsibility of the company putting forward a scheme to decide whether a single meeting of members/creditors, or more than one meeting, is required. If the meeting(s) are improperly constituted, the company bears the risk that an objection will be made at the sanction hearing and, potentially, that its application for sanction will be refused. The Privy Council notes three "qualifications" to the principles set out in *UDL* v *Argos Engineering*. These include that the English courts seek to determine class constitution issues, so far as possible, at the scheme convening hearing, with the aim of reducing the risk of a scheme failing at sanction for class constitution deficiencies. In addition, it notes that the relevant distinction between rights and interests in the schemes context ought to focus on rights before the scheme and the effect of the scheme on those rights i.e. the 'rights in' and 'rights out' of the scheme class.

(f) *Dialog Semiconductor Limited v HMRC [2025] UKFTT 1188 (TC)*. This decision highlights how a termination fee (or break fee) paid by a target to a bidder on an aborted M&A deal is not automatically taxable as a chargeable gain, on a disposal of assets. The First-Tier Tribunal found that a termination fee paid to the taxpayer (Dialog) when a Delaware law merger was abandoned was not taxable as a capital gain under section 22(1)(c) of the Taxation of Chargeable Gains Act 1992. As the fee was paid to give effect to a contractual right, rather than because the taxpayer gave up or waived a right, the payment fell out of scope of the charge to capital gains tax.

(g) *King Crude Carriers SA and others v Ridgebury November LLC and others [2025] UKSC 39*. The Supreme Court affirmed the High Court's decision (overturning the Court of Appeal's decision) that there is no principle of English law that where a party wrongfully prevents the fulfilment of a condition precedent to its own debt obligation that condition is deemed fulfilled. Under the ship sale contracts in question, the buyers were required to pay deposits to the sellers subject to certain conditions precedent, including the provision of all necessary documentation to open an escrow account, which the buyers failed to satisfy. The Supreme Court found that the English law authorities "*do not speak with one voice*" on whether there is such a principle of law, and further observed that the Court of Appeal had formulated the principle in terms which recognised broad exceptions (the application and rationale of which were uncertain), and that a supposed general rule that has to be stated in terms which significantly and uncertainly qualify and curtail it does not make for a robust principle of law. The Supreme Court also found that the consequence of rejecting the principle did not lead to injustice as (subject to terms to the contrary) where a condition precedent has not been fulfilled because of the debtor's breach of contract, that breach is appropriately and adequately dealt with in English law through the claimant's remedy in damages. The Supreme Court also observed that had the parties intended the payment to be made regardless of whether the condition was performed, they would not have made the payment conditional; it is always open to the parties to include a term in the contract making clear that a condition precedent to a debt obligation does not apply where the failure of the condition precedent is caused by the debtor's breach.

15 December 2025