THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 330th meeting
at 9:00 a.m. on 27th November 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*); Vanessa Knapp (*Independent*); George Knighton (*Skadden Arps Slate Meagher & Flom (UK) LLP*); Stephen Mathews (*A&O Shearman LLP*); Juliet McKean (Secretary, *Clifford Chance LLP*); Ziyad Nassif (*Freshfields Bruckhaus Deringer LLP*); James Parkes (*CMS Cameron McKenna Nabarro Olswang LLP*); Colin Passmore (*City of London Law Society*); Ben Perry (*Sullivan & Cromwell LLP*); Jon Perry (*Norton Rose Fulbright LLP*); David Pudge (Chair, *Clifford Chance LLP*); Caroline Rae (*Herbert Smith Freehills LLP*); Lucy Reeve (*Chair of the Law Society Company Law Committee*); Simon Tysoe (*Slaughter and May*); Adrian West (*Travers Smith LLP*); Peter Wilson (alternate for Allan Taylor, *White and Case LLP*); Simon Witty (*Davis Polk & Wardwell London LLP*); and Victoria Younghusband (*Charles Russell Speechlys LLP*).

*Apologies*: Kevin Hart (*City of London Law Society*); Matthew Rous (*City of London Law Society*); Allan Taylor (*White and Case LLP*); Liz Wall (*A&O Shearman LLP*); and Simon Wood (*Addleshaw Goddard LLP*).

The Chair informed members of the Committee that Chris Horton would be retiring from Latham & Watkins LLP at the end of the year and, consequently, from the Committee. The Chair thanked Chris Horton for his contributions during his time on the Committee. The Chair also informed members of the Committee that James Inness of Latham & Watkins LLP would be joining the Committee to fill the vacancy arising upon Chris's retirement.

1. **Approval of minutes**

The Chair noted that a draft version of the minutes of the meeting held on 17 July 2024 was circulated to members on 5 August 2024. The Chair noted that the minutes are considered settled.

1. **Matters arising**
	1. *Committee agenda for September 2024*. The Chair noted the items in the agenda for the meeting of the Committee that was scheduled to be held in September 2024 (a copy of the agenda can be found in the Annex to these minutes).
	2. *Digitisation Taskforce report*. The Chair reported that on 17 November 2024 UK Shareholders' Association (**UKSA**), ShareSoc and ShareAction published their email dated 12 November 2024 to the Digitisation Taskforce which contains their collective views on the subject of digitisation of shares, including that the Taskforce needs to ensure that there is no loss of shareholder rights for those who currently have paper share certificates and restore the same level of rights to those whose shares are and will be held in nominee accounts. The Chair noted that the Committee had also raised these points in its response to the Digitisation Taskforce's interim report, along with the point that investors should be able to exercise their rights in a simple, timely and cost-efficient manner in a digitised world. The Chair also reported that the press release states that UKSA’s view is that the right digitisation solution, which should not be technologically difficult nowadays, is to have the names of all beneficial owners of shares on registers, whether intermediated or not.
	3. *PISCES consultation response and draft legislation.*  The Chair reported that on 14 November 2024 HMT published its response to its consultation on the Private Intermittent Securities and Capital Exchange System (**PISCES**) which sets out how the Government intends to design the regulatory framework for PISCES in light of the views received. It was noted that HMT has published the draft legislation to establish PISCES, along with a policy note that provides commentary to aid the reader in reviewing the draft legislation, and welcomes technical comments on the draft legislation by 9 January 2025. It was also noted that subject to any feedback received, HMT intends to introduce the PISCES legislation by May 2025. It was further noted that the FCA will publish a consultation on its proposed rules for PISCES in due course and, following any feedback, the FCA will finalise these rules before opening the PISCES Sandbox for applications. Items 5.8(b) and 5.8(c) in respect of PISCES were also noted.

Nicholas Holmes updated the Committee as follows:

* PISCES is a proposed new regulated trading platform that would allow intermittent trading of private company shares. Institutional investors would be able to buy shares on PISCES, however, retail investors would not be able to do so.
* The Government had originally proposed that a modified form of UK MAR should apply to PISCES. However, following concerns raised by respondents to the consultation, including the CLLS Regulatory Law Committee and the Joint Prospectus and Listing Rules Working Group, the FCA will instead be given rule-making powers to create a new and bespoke disclosure regime for PISCES. One continuing concern of the CLLS Regulatory Law Committee and the JWG is around the difficulties in applying the market abuse regime to a market where the share price is much less predictable/does not exist.
* The bespoke regime would require disclosures modelled on private markets. HMT appears to be more willing to move to a more "buyer beware" regime because trading on PISCES would not be available to retail investors. Institutional investors would need to do their own due diligence.
* HMT is proposing to introduce a PISCES disclosure liability regime, which applies a "negligence" liability standard to more certain information, such as past financial information, and a "recklessness" standard to less certain information, such as forward-looking information.
	1. *FCA enforcement guidance consultation*. The Chair reported that on 13 November 2024 the FCA Chair and Chief Executive gave oral evidence to the House of Lords Financial Services Regulation Committee and that the written evidence in response to the House of Lords Committee's call for evidence on FCA consultation paper CP24/2 (Our Enforcement Guide and publicising enforcement investigations - a new approach) had been published. The Chair noted that the FCA is reconsidering its proposals on enforcement transparency following a strong reaction from the industry, including strong views of the Committee and the CLLS Regulatory Law Committee that it is not appropriate for the FCA to publicly announce enforcement investigations at an early stage of the investigation. The Chair noted that the FCA is expected to publish information on its next steps and proposed changes to its plans on 28 November 2024. Members of the Committee agreed that it would be sensible to consider the FCA's revised proposals once published and the Secretary agreed to add this development to the discussion items on the Committee's agenda for the meeting to be held in January 2025.
	2. *Panel Statement 2024/24*. The Chair reported that on 6 November 2024 the Takeover Panel published Panel Statement 2024/24 which announces the publication of Response Statement RS 2024/1 (Companies to which the Takeover Code applies), the individual responses received from the respondents to PCP 2024/1 and Instrument 2024/3, which makes the amendments to the Takeover Code set out in RS 2024/1, largely in the form proposed by the Takeover Panel. The Chair noted that the amendments will refocus the application of the Code on companies which are registered in the UK, the Channel Islands or the Isle of Man and whose securities are (or were recently) admitted to trading in one of those jurisdictions. The Chair also noted that an important further change in the scope of the Code is the abolition of the central management or 'residency' test, which is a welcomed simplification for determining whether the Code applies. It was noted that there is also a new disclosure requirement on the delisting of a Code-governed company. The Chair reported that the changes will take effect on 3 February 2025, however, transitional arrangements will apply until 2 February 2027. It was noted that the Takeover Panel has published a table that summarises the application of the Code: (i) before the implementation date; (ii) during the two year transition period; and (iii) following the end of the transition period and has also published two flowcharts, one summarising whether a company will be a transition company on the implementation date and the other summarising whether a transition company will be a Code company in respect of a specific transaction.
	3. *Guidance on the failure to prevent fraud offence*. The Chair reported that the new criminal offence of failure to prevent fraud for large organisations (in ECCTA 2023) will come into force on 1 September 2025 pursuant to The Economic Crime and Corporate Transparency Act 2023 (Commencement No. 3) Regulations 2024. The Chair also reported that on 6 November 2024 the Home Office published its guidance on the offence of failure to prevent fraud, which contains guidance on reasonable fraud prevention procedures. The Chair noted that organisations will have a defence in court if they can prove that they had reasonable procedures in place to prevent the fraud and now have nine months to prepare and develop these procedures. The Chair noted that the steps detailed in the Home Office guidance in relation to the new offence are similar to those that organisations will already be taking in relation to bribery and tax evasion risks. The Chair also noted that the jurisdictional scope of the new offence is broad, however, many in-scope organisations are already preparing for the implementation of the new regime, including by implementing appropriate policies and training programmes.
	4. *Companies House ECCTA implementation plan*. The Chair reported that on 16 October 2024 Companies House published a policy paper that contains its current intended timetable for implementing the reforms in ECCTA 2023. The Chair noted that key dates include: (i) by spring 2025, Companies House should be able to register AML-regulated UK firms as an Authorised Corporate Service Provider and should be able to allow individuals to voluntarily verify their identity; (ii) by autumn 2025, the new identity verification requirements for new directors and PSCs should be brought into force, with a 12 month transition period for existing directors and PSCs linked to the filing of the relevant company's next confirmation statement; (iii) by spring 2026, the restrictions on who may deliver documents to Companies House should be brought into force; and (iv) reforms to limited partnerships being implemented no sooner than spring 2026.
	5. *Written Statement on future company law reforms.* The Chair reported that on 14 October 2024 the Secretary of State for Business and Trade announced a number of future company law reforms in a Written Statement to Parliament. The Chair noted that the Government has confirmed that it will: (i) consult on the design of a corporate re-domiciliation regime (see minute 4.4); (ii) consult on simplifying and modernising the UK’s non-financial reporting framework in 2025 (see also minute 3.9); (iii) lay legislation by the end of 2024 to remove "redundant reporting requirements" and uplift the monetary size thresholds for micro-entities, small and medium-sized companies, as well as make "technical fixes" to the UK’s audit framework; (iv) examine the potential for updating shareholder communication in line with technology and clarifying the law in relation to virtual AGMs; and (v) make changes to speed up and simplify the process for companies raising new share capital, for example, by reducing the offer period for rights issues and open offers from 10 to seven working days.
	6. *DBT simpler corporate reporting consultation responses*. The Chair noted that on 14 October 2024 DBT published a summary of responses to its consultation on simpler corporate reporting held earlier this year where it proposed to change corporate reporting requirements for medium-sized companies. The Chair reported that DBT confirmed that, whilst the majority of respondents supported the proposed changes, it is not taking forward the proposals at this time as it is going to consider them as part of its broader non-financial reporting review (see minute 3.8). It was noted that on 14 October 2024 DBT also published research examining the benefits and value of non-financial information to investors.
	7. *Audit Reform and Corporate Governance Bill*. The Chair reported that on 17 July 2024 the King's Speech announced that the Government will publish a draft Audit Reform and Corporate Governance Bill. The Chair noted that the background briefing notes highlight that the Bill will replace the FRC with the Audit, Reporting and Governance Authority and, to quote the Government, it will give this new regulator "*powers to investigate and sanction company directors for serious failures in relation to their financial reporting and audit responsibilities, so there are consequences for putting forward dodgy accounts*" and put in place "*a regime to oversee the audit market, protect against conflicts of interest at audit firms, and build resilience so quality audit is available to all companies that need it*". It was noted that the FRC has welcomed the announcement.
1. **Discussions**
	1. *New public offers and admissions to trading regime*. The Chair reported that on 26 July 2024 the FCA launched two separate consultations on: (i) the new Public Offers and Admission to Trading Regulations regime (POATRs) (CP24/12), which will replace the UK prospectus regime; and (ii) the new public offer platform regime (CP24/13), which will allow authorised firms to facilitate companies making public offers of securities to investors outside public markets when raising more than £5m. It was noted that these reforms will help companies make public offers of securities to investors, including retail investors. The Chair noted that on 18 October 2024 the Joint Prospectus and Listing Rules Working Group submitted a response to CP24/12.

Nicholas Holmes updated the Committee on the key elements as follows:

* The FCA proposes to continue to require a prospectus for admissions to trading of securities on a regulated market, however, it is proposing a less prescriptive approach to the detailed requirements for a summary set out in the UK Prospectus Regulation and it is proposing to increase the mandatory page limit to the summary from seven pages to 10 pages.
* The premium listing requirements for historical financial information and for a 3-year revenue earning track record and for an unqualified working capital statement were removed from the UK Listing Rules as part of the reforms made in July 2024, however, the financial information requirements in the prospectus are being retained. The FCA proposes that the balance sheet date of the last year of audited financial information may not be older than: (i) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; and (ii) 16 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document. The JWG has suggested that the FCA might want to consider more recent dates.
* The FCA proposes to retain the current requirement to include a working capital statement in a prospectus but is interested in views on whether or not it should allow issuers to disclose significant judgements made in preparing the working capital statement, including the assumptions the statement is based on and the sensitivity analysis which has been performed. The JWG is broadly supportive of a move away from a binary working capital statement, however, it has highlighted that if a revised approach is adopted, it will be important to ensure that the simplicity and readability of the working capital statement in the current regime is preserved and that the introduction of a complex regime would be unhelpful. The FCA is also interested in views on whether issuers should be able to base the working capital statement on the underlying due diligence performed for the purposes of viability and going concern disclosures in their annual financial statements. The JWG agrees that it would be desirable to align the wording of the working capital statement and related disclosures together with the work carried out to support them more closely with the going concern and viability disclosures in annual financial statements together with the work carried out to support them. However, the JWG has highlighted that this alignment should not be at the expense of clarity, for example, the working capital statement should not be caveated by reference to the underlying due diligence performed for the purposes of viability and going concern disclosures, which is a distinct workstream carried out for a different purpose. In addition, the JWG considers that the directors should continue to do the work that is necessary for making the statement.
* As part of CP24/12, the FCA published draft guidance for companies with a complex financial history on the financial information they need to provide the FCA in the prospectus. The JWG welcomes the proposal for this additional guidance, however, considers that the draft guidance will be of limited use to issuers and their advisers because it only covers extreme scenarios. The JWG has suggested that it would be helpful to include a more challenging, less clear-cut scenario in the guidance.
* The more significant changes relate to secondary capital raisings, including the FCA's proposal to raise the threshold at which a prospectus should be required for an admission of shares to trading from the current 20% of existing share capital to a new threshold of 75%, which is the top end of the range that has been under discussion.
* The FCA confirmed that it will continue to allow issuers to publish a voluntary prospectus for approval by the FCA for further issuances below the 75% threshold. The JWG is supportive of this proposal, not least because where a fundraising includes a US element a prospectus will be required in order to satisfy US disclosure requirements and an issuer will be able to benefit from the revised liability standard for protected forward-looking statements (**PFLS**) where it produces a voluntary prospectus which is approved by the FCA. In addition, the JWG has highlighted that a prospectus which is approved in accordance with Part VI of FSMA falls within the scope of article 70 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and therefore does not need to be communicated or approved by an authorised person for the purposes of section 21 FSMA. For these reasons, the JWG believes that it is likely that issuers will opt to produce a prospectus on a voluntary basis for a pre-emptive issuance above 20% but below the 75% threshold.
* CP24/12 does not contain any proposals or guidance on disclosure requirements in connection with a secondary capital raising below the 75% threshold where no prospectus is published. The JWG has suggested that the FCA could publish non-binding guidance on the form of documentation it considers should be published as well as the minimum content requirements.
* The FCA is seeking views on whether a supplementary approach is required for secondary capital raisings by issuers in financial difficulties. There were differing views on this issue among members of the JWG and, therefore, the JWG's response contains two views. The JWG has suggested that it would be appropriate for an issuer in financial difficulties to be required to publish a prospectus, even if the amount to be raised is below the 75% threshold, and that consideration should be given to requiring appointment of a sponsor. This was the view of the majority of the members of the JWG. However, the JWG's response notes that a view was expressed that the 75% threshold should apply to all capital raisings and therefore equally to issuers in financial difficulty because, amongst other reasons, UK MAR, UKLR 1.3.3R and Listing Principle 6 already require an issuer in this situation to keep the market adequately informed.
* The JWG considers that the FCA's proposals for a new regime for PFLS are well thought through. The JWG generally agrees with the FCA's proposal that for a forward-looking statement to be considered a PFLS it should need to be verifiable at a future date. However, whilst the JWG appreciates that market participants will be familiar with the "reasonable investor" test, the JWG has raised the concern in its response that the use of this test in the general definition of a PFLS may be too limiting as it may preclude the inclusion of information which is useful, or relates to information that is useful, to investors without necessarily meeting the "reasonable investor" test.
	1. *IoD code of conduct for directors*. The Chair reported that on 23 October 2024 the IoD published its new voluntary code of conduct for directors. The Chair noted that a working group of the Committee, led by Allan Taylor, submitted a detailed response to the IoD's consultation on its code of conduct for directors highlighting a number of concerns with the interplay between the code and directors' duties more generally.
	2. *Virtual AGMs*. The Chair led discussions on virtual AGMs in light of the comments on virtual AGMs set out in the Written Statement to Parliament detailed in minute 3.8.
	3. *Corporate re-domiciliation regime*. The Chair reported that on 14 October 2024 the Government announced the publication of the UK Independent Expert Panel's report on corporate re-domiciliation. The Chair noted that the Government welcomes the Expert Panel’s report and intends to consult in due course on a proposed regime design as announced in a Written Statement to Parliament (see minute 3.8). Vanessa Knapp, who chairs the Expert Panel, updated members of the Committee as follows:
* The report sets out the Expert Panel's proposals for implementation of a UK corporate re-domiciliation regime and supports a two-way re-domiciliation regime that will enable companies to move both into and out of the UK. The Expert Panel considers that this flexibility will be an important feature as part of increasing the overall attractiveness of the UK as a destination of choice.
* The Expert Panel believes that the general approach of the regime should be to treat the re-domiciliation process in a manner as similar as possible to new company incorporations in the UK. Therefore, it proposes that a body corporate applying to re-domicile to the UK should provide all the information that someone would need to provide when forming a company in the UK, however, it should also provide some additional information given the body corporate already exists.
* The Expert Panel recommends that the regime does not include any good faith element (which was suggested by the Government at the time when consulting on the new regime). As the Expert Panel considers that Companies House is the right organisation to deal with applications for re-domiciliation, in its view it would not be desirable to have a regime where Companies House needs to make a determination as to whether an application to re-domicile to the UK was being made in good faith or not; this would impose a considerable additional burden on Companies House's resources and reduce the efficiency and attractiveness of the regime.
* The Expert Panel suggests that the applicant should be primarily responsible for liaising with the registrar and any other relevant authorities in the overseas jurisdiction in respect of de-registration. Although ideally re-domiciliation to the UK would take place on the same day as de-registration in the existing place of incorporation, this may be hard to achieve in practice. The Expert Panel has therefore suggested an approach which is intended to ensure that legal personality is preserved (so the applicant will be registered in the UK before it is de-registered in its existing jurisdiction) and any period where there is registration in two jurisdictions is kept short. The Expert Panel suggests that once the re-domiciling company has been registered as a UK company, a document evidencing that the company has been de-registered in its departing jurisdiction must be submitted to Companies House within a certain time period after the date of registration. The Expert Panel also suggests that if the re-domiciled company does not provide this evidence within the relevant time period, Companies House should be able to strike the re-domiciled company off the register.
* The Expert Panel's report contains a section that seeks to identify the changes that would be needed to existing CA 2006 provisions to accommodate the new re-domiciliation regime. The Expert Panel considers that setting out how a re-domiciled company would be treated under the CA 2006 would provide greater clarity and make re-domiciling more attractive. However, the sections in the CA 2006 relating to accounts and auditing are particularly complex to consider, therefore, the Expert Panel recommends that DBT should carry out further consultation on these matters before making any changes. Distributions are another complex area as some re-domiciled companies will come from a jurisdiction where they have not been required to determine their realised profits and realised losses. The Expert Panel suggests adopting a similar approach in section 850(3) CA 2006 which provides that where directors, after making reasonable enquiries, are unable to determine whether profits or losses made before 1980 are realised or unrealised, they may treat the profits as realised and the losses as unrealised.
* The Expert Panel has suggested protections that should be available to members and creditors and in relation to national security interests where a UK company wishes to re-domicile outside the UK. The Expert Panel suggests that outward re-domiciliation should be covered by the National Security and Investment Act 2021 (**NSI Act**). The Expert Panel's view is that no specific national security assessment should be required for applications to re-domicile to the UK, however, if the Government believes that a specific national security test is necessary, the Expert Panel considers that it would be preferable for inward re-domiciliation to be made subject to the Government's power to call in transactions for national security assessment under the NSI Act.
	1. *FCA thematic review on notifications of delayed disclosure of inside information*. The Chair reported that the FCA is carrying out a thematic review focussed on notifications of delayed disclosure of inside information and had requested an outreach meeting with the Committee as it is seeking practical knowledge and experience of delaying disclosure of inside information and completing and submitting the delayed disclosure notification form to the FCA. Victoria Younghusband updated the Committee on the call between the FCA and members of the FCA/CLLS CLC Liaison Committee held on 5 August 2024. The Chair also noted PMB 52 at item 5.5(a).
	2. *FRC consultation on UK Stewardship Code*. The Chair reported that on 11 November 2024 the FRC published its consultation on significant updates to the UK Stewardship Code. The Chair noted that the key proposals include: (i) a revised and enhanced definition of stewardship; (ii) a streamlined reporting process separating policy and activity disclosures to reduce reporting burdens; (iii) targeted principles for different types of signatories and service providers; and (iv) new guidance to support effective implementation and help signatories with the transition to the new reporting arrangements. It was noted that the consultation closes on 19 February 2025 and that the FRC anticipates publishing the updated UK Stewardship Code in the first half of 2025, with an effective date of 1 January 2026. Members of the Committee agreed that the Committee would not submit a response to this consultation.
1. **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 item 5.5(a) which was discussed in the context of the item at minute 4.5 and the Chair also briefly commented on the cases at item 5.9.

* 1. **Company law**
		1. *Draft of The Companies and Limited Liability Partnerships (Protection and Disclosure of Information and Consequential Amendments) Regulations 2024*. On 31 October 2024, a revised draft of The Companies and Limited Liability Partnerships (Protection and Disclosure of Information and Consequential Amendments) Regulations 2024 was laid before Parliament, together with a draft explanatory memorandum. These regulations supersede the earlier draft laid on 22 May 2024 and are in substantially the same form as the earlier draft, although they are expressed to come into force on 27 January 2025.
		2. *Draft of The Unique Identifiers (Application of Company Law) Regulations 2024*. On 31 October 2024, a draft of The Unique Identifiers (Application of Company Law) Regulations 2024 was laid before Parliament, together with a draft explanatory memorandum. These draft regulations give the Registrar powers to allocate unique identifiers to individuals associated with LPs, LLPs, companies authorised to register under the Companies Act 2006 (section 1040 CA 2006), unregistered companies and qualifying Scottish partnerships. They will enter into force when section 68 (allocation of unique identifiers) ECCTA 2023 comes fully into force.
		3. *Company Directors (Duties) Bill*. On 21 October 2024, a Private Members' Bill to amend section 172 CA 2006 to require company directors to balance their duty to promote the success of the company with duties in respect of the environment and the company’s employees was presented to Parliament (Sponsor, Martin Wrigley (Liberal Democrat)). The second reading is scheduled for 4 July 2025.
		4. *Companies House approach to financial penalties and enforcement policy*. On 27 September 2024, Companies House published its guidance on its approach to financial penalties and its guidance on its enforcement policy. Companies House had previously stated that it would not issue fines until it had published guidance on its approach to enforcement and imposing fines.
	2. **Corporate governance**
		1. *ISS Governance 2025 benchmark voting policy comment period open*. On 18 November 2024, ISS Governance announced the launch of its open comment period on proposed changes to its benchmark voting policies for 2025. The comment period closes on 2 December 2024.
		2. *Glass Lewis 2025 proxy voting policy guidelines*. On 14 November 2024, Glass Lewis announced the publication of its 2025 proxy voting policy guidelines for the United States, the United Kingdom and Europe and guidelines for shareholder proposals and ESG-related issues. The 2025 voting policy guidelines will apply to shareholder meetings held after 1 January 2025.
		3. *The IA's Principles of Remuneration*. On 9 October 2024, the Investment Association announced the publication of its updated Principles of Remuneration. The IA's press release states that its guidelines have been 'simplified' to reflect the evolving practices in the market and the expectations of investors and are clear that there is flexibility to adapt pay structures to best suit a company’s business and strategy. The press release also states that IA members want a competitive UK listing environment that attracts high quality companies to list and operate in the UK, while delivering long-term value for their shareholders.
	3. **Reporting and disclosure**
		1. *European Commission FAQs on sustainability reporting*. On 13 November 2024, the European Commission published a set of frequently asked questions that clarify the interpretation of certain provisions on sustainability reporting introduced by the Corporate Sustainability Reporting Directive.
		2. *TNFD publishes draft guidance on nature transition planning*. On 27 October 2024, the Taskforce on Nature-related Financial Disclosures (**TNFD**) announced the publication of a discussion paper that sets out draft guidance on nature transition planning for corporates and financial institutions developing and disclosing a transition plan in line with the TNFD recommended disclosures.
		3. *Measures to tackle late payments and long payment terms*. On 7 October 2024, the Secretary of State for Business and Trade announced in a Written Statement to Parliament that the Government will: (i) lay secondary legislation in the current Parliamentary session to require large companies to include information about their payment performance in their annual reports; (ii) launch a consultation within months on additional legislative measures to address late payments and long payment terms; and (iii) launch a new Fair Payment Code (to replace the existing Prompt Payment Code). This follows DBT's press release dated 19 September 2024 that announced the Government's new package of measures to tackle late payments to support small businesses and the self-employed.
		4. *Revised draft Reporting on Payment Practices and Performance (Amendment) (No 2) Regulations 2024*. On 7 October 2024, a revised draft of The Reporting on Payment Practices and Performance (Amendment) (No 2) Regulations 2024 was published and laid before Parliament (see also the explanatory memorandum). These draft regulations are in the same form as the previous draft published in May 2024, except that: (i) they are expressed to come into force on 1 March 2025; and (ii) the new reporting requirements apply in relation to financial years beginning on or after 1 April 2025.
		5. *FRC Annual Review of Corporate Reporting*. On 24 September 2024, the FRC announced the publication of its Annual Review of Corporate Reporting 2023/24.
		6. *Updated guidance to reporting on payment practices and performance*. On 19 September 2024, DBT published updated guidance to reporting on payment practices and performance. The guidance was further updated on 24 and 25 October 2024.
	4. **Equity capital markets**
		1. *EU prospectus regime*. On 28 October 2024, ESMA announced the publication of a consultation paper on draft technical advice under the EU Prospectus Regulation and a call for evidence on prospectus liability. These publications followed the Council of the EU's adoption of the EU Listing Act which amends the EU Prospectus Regulation (see item 5.5(b)). ESMA has requested comments by 31 December 2024 and will publish in Q2 2025 its final technical advice to the European Commission in two separate final reports based on feedback received.
		2. *Accelerated Settlement Technical Group draft recommendations report and consultation*. On 27 September 2024, the Accelerated Settlement Technical Group published its draft recommendations report and consultation. On 15 October 2024, ESMA, the European Commission and the European Central Bank released a statement on the next steps for moving to T+1 securities settlement in the EU stating: "*it is urgent to act if the EU wants to avoid prolonging and amplifying the negative impacts of the misalignment with major jurisdictions internationally*".
		3. *FCA PMB No. 51*. On 24 September 2024, the FCA published Primary Market Bulletin No. 51. In this edition, the FCA provides feedback on its consultation in PMB No. 48 and subsequent changes to its Knowledge Base on the listing regime. The changes reflect feedback from the consultation, the publication of Policy Statement PS24/6 and the final UK Listing Rules.
	5. **MAR**
		1. *FCA PMB No. 52*. On 15 November 2024, the FCA published Primary Market Bulletin No. 52. In this edition, the FCA covers: (i) issuers’ ability to identify and make public information that is inside information under UK MAR in three common scenarios where the FCA has seen differing approaches by issuers to identify when information may constitute inside information. The three scenarios are offer processes, preparation of periodic financial information and CEO resignations and appointments; and (ii) the application of UK MAR to the dissemination of information by issuers during shareholder calls and meetings, in particular, using communication apps (such as WhatsApp) to interact with groups of smaller private shareholders. This edition also covers the dissemination of regulatory information by issuers during interruptions to Primary Information Provider services following observations during the July 2024 Crowdstrike-related IT outage.
		2. *Amendments to EU MAR*. On 8 October 2024, the Council of the EU announced that it has adopted the EU Listing Act, which includes amendments to the EU Market Abuse Regulation (as well as the EU Prospectus Regulation, MiFID II and MiFIR). On 14 November 2024, the EU Listing Act, including Regulation (EU) 2024/2809, was published in the Official Journal of the European Union and enters into force 20 days after its publication. Some of the changes to EU MAR will take effect on the entry into force of the EU Listing Act, however, the changes to the issuer disclosure obligations will take effect 18 months after entry into force. The EU Listing Act includes an EU Directive that amends MiFID II and an EU Directive on multiple-vote share structures in companies that seek admission to trading of their shares on an MTF.
	6. **Auditing and accounting**
		1. *'Big four' audit firms conclude transition period of operational separation.* On 10 October 2024, the FRC announced that the four largest audit firms (Deloitte, EY, KPMG and PwC) have concluded the transition period of operational separation of their UK audit practices from their non-audit practices.
	7. **Takeovers**
		1. See minute 3.5 on Panel Statement 2024/24.
	8. **Miscellaneous**
		1. *Future regulatory regime for ESG ratings providers*. On 14 November 2024, HMT published its consultation response on a future regulatory regime for ESG ratings providers, along with draft legislation. The Government will finalise the legislation next year and the FCA will then consult on the specific requirements. HMT welcomes technical comments on the draft legislation by 14 January 2025.
		2. *FMI Sandboxes*. On 31 October 2024, a draft of The Financial Services and Markets Act 2023 (Addition of Relevant Enactments) Regulations 2024 was laid before Parliament, together with a draft explanatory memorandum. The effect of these draft regulations is to include new relevant enactments, including the UK Prospectus Regulation, within the list at section 17(3) of the Financial Services and Markets Act 2023 so that these enactments can be modified for Financial Market Infrastructure (**FMI**) Sandboxes, including the Digital Securities Sandbox (see item 5.8(f)) and the PISCES Sandbox (see minute 3.3 and item 5.8(c)).
		3. *PISCES - stamp duty and SDRT exemption*. On 30 October 2024, HMRC published a policy paper which states that HMT will be provided with a power to make stamp duty and stamp duty reserve tax changes in relation to FMI Sandboxes and that this power will be used to provide an exemption for PISCES transactions as announced at Autumn Budget 2024. The aim is to help increase the attractiveness and overall participation on a PISCES platform.
		4. *The Limited Liability Partnerships (Application of Company Law) (No. 2) Regulations 2024*. The Limited Liability Partnerships (Application of Company Law) (No. 2) Regulations 2024 were made on 29 October 2024 and will come into force on the day section 70 (Registrar's power to strike off company registered on false basis) ECCTA 2023 comes fully into force (see also the explanatory memorandum). These regulations give powers to the Registrar to impose financial penalties on LLPs and their members for offences committed under LLP law and to strike off an LLP registered on a false basis.
		5. *House of Lords Select Committee report on Modern Slavery Act 2015*. On 16 October 2024, the House of Lords Modern Slavery Act 2015 Committee announced the publication of its report on the Modern Slavery Act 2015 (a short report has also been published). The report states that the UK has fallen behind internationally in the fight against modern slavery. Amongst other things, the report recommends introducing legislation requiring companies meeting a certain threshold to undertake modern slavery due diligence in their supply chains.
		6. *Digital Securities Sandbox*. On 30 September 2024, the Bank of England and the FCA published a joint policy statement (PS24/12) on the Digital Securities Sandbox, guidance and other materials setting out their approach to implementing and operating the Digital Securities Sandbox.
		7. *Revocation of REUL commencement regulations*. The Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 2 and Saving Provisions) (Revocation) Regulations 2024 came into force on 18 September 2024. These regulations revoke the Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 2 and Saving Provisions) Regulations 2024 that were made to commence section 6 of the Retained EU Law (Revocation and Reform) Act 2023 on 1 October 2024. As a consequence, section 6 did not come into force on 1 October 2024. On 26 September 2024, DBT sent a letter to the Bar Council stating that the Government intends to look at this issue again in the wider context of its work to reset UK relations with the EU and that it remains open to the Government to bring forward further regulations at any point in the future to bring section 6 into force.
	9. **Cases**
		1. *BM Brazil 1 Fundo De Investimento em Participações Multistrategia & ors v (1) Sibanye BM Brazil (PTY) Ltd (2) Sibanye Stillwater Limited [2024] EWHC 2566 (Comm)*. The High Court had to determine whether a geotechnical event at a mine constituted a "Material Adverse Effect" (**MAE**) under a share purchase agreement giving the buyer a right to terminate the SPA. The judgment contains some helpful guidance on how to interpret a MAE or MAC clause, including: (i) there is no "bright line" test for what constitutes materiality which will be applicable to all MAE clauses, but "material" is intended to mean "significant or substantial", and not simply more than *de minimis*; (ii) in the context of the MAE clause in this case, the judge's view was that a reduction in equity value of: (a) 20% or more would be material; (b) 15% or more might be material; and (c) 10% is rather too low to count as material; (iii) when a court needs to assess whether any change, event or effect "would reasonably be expected" to be material and adverse to the business, financial condition etc. of group companies, the assessment is whether a reasonable person, at the time when the MAE is relied on to terminate the SPA, would have considered it more likely than not that the matter would turn out to be material. It is for the court to assess what was reasonably to be expected and that judgment does not require an assessment of what might be the range of views held by reasonable people in the position of the parties as that would add an extra degree of uncertainty to the applicability of the clause. Although not determinative, contemporaneous assessments of the parties to the SPA, if made carefully and in good faith, might carry considerable weight in the court’s assessment; and (iv) where the MAE definition provides that a matter is only a MAE if the "change, event or effect" is material and adverse, the impact of other latent issues revealed as a consequence of the "change, event or effect" do not count towards the assessment of materiality.
		2. *Standard Chartered plc v Guaranty Nominees Limited and others [2024] EWHC 2605 (Comm)*. In a case brought under the Financial Markets Test Case Scheme, the High Court had to determine the effect of the cessation of publication of LIBOR on perpetual preferences shares issued by Standard Chartered plc that provide for the payment of dividends by reference to 'three-month USD LIBOR'. The High Court held that, in order to give business efficacy to the arrangements, it was necessary to imply a term that if the express definition of 'Three Month LIBOR' in the preference share terms ceases to be capable of operation, dividends should be calculated using the reasonable alternative rate to three-month USD LIBOR at the date the dividend falls to be calculated. The High Court rejected the argument that instead a term should be implied that Standard Chartered plc must redeem the preference shares when legal and regulatory conditions allow. The judges stated that the arguments which have led them to find the implied term are likely to be similarly persuasive when considering the effect of the cessation of LIBOR on debt instruments which use LIBOR as a reference rate but do not expressly provide for what is to happen if publication of LIBOR ceases.
		3. *HMRC v Peter Gould [2024] UKUT 00285 (TCC)*. The Upper Tribunal held that, subject to any agreement to the contrary, where a company pays an interim dividend to some but not all of the shareholders of the same class of shares, any shareholders who have not been paid their share of the interim dividend would have an enforceable debt which arises at the time the other shareholders are paid. This enforceable debt arises by virtue of the principle that shareholders of the same class of shares must be treated equally. The Upper Tribunal also held that this type of discrimination between shareholders of the same class of shares (i.e., where an interim dividend is paid to some but not all of the shareholders) would not be consistent with the provisions of regulation 104 of Table A. However, shareholders can agree that they be paid an interim dividend at different times without creating an enforceable debt to any shareholder paid at a later date or a shareholder can waive their right to enforce payment of an interim dividend until a later date (although they must do so before the interim dividend is paid to any other shareholder).
		4. *Allianz Funds Multi-Strategy Trust and others v Barclays plc [2024] EWHC 2710*. In a "stockdrop" decision, the High Court struck out a market reliance claim by passive investors, finding that such investors are unable to meet the "reliance" element of the requirements of the statutory liability regime in relation to issuer's published information in section 90A/Schedule 10A of the Financial Services and Markets Act 2000 (**FSMA**). Instead of relying on defects in published information, the claimants had relied on a concept of "price/market reliance". The High Court therefore had to interpret the "reliance" evidential hurdle for claimants of this type. It found that these claimants would have to show that they in fact had relied on alleged misleading statements or omissions in published information in order to bring a section 90A/Schedule 10A FSMA claim. The High Court also interpreted the narrow circumstances in which a dishonest delay claim may be brought (as these claims remain open to passive investors). A claim for dishonest delay cannot be used to bypass the reliance requirement.

3 January 2025

**Annex**

THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Agenda

for the 329th meeting
at 9:00 a.m. on 25th September 2024
by telephone
(comments to Juliet McKean at juliet.mckean@cliffordchance.com)

1. **Welcome and apologies**
2. **Approval of minutes**

A draft version of the minutes of the meeting held on 17 July 2024 was circulated to members on 5 August 2024.

1. **Matters arising**
	1. *Consultation on new laws to tackle late payments*. On 19 September 2024, DBT published a press release announcing that the Government will consult on tough new laws to tackle late payments in the coming months. The press release states that "*the Government will consult on tough new laws which will hold larger firms to account and get cash flowing back into businesses*" and "*new legislation being brought in the coming weeks will require all large businesses to include payment reporting in their annual reports - putting the onus on them to provide clarity in their annual reports about how they treat small firms*" and "*enforcement will also be stepped up on the existing late payment performance reporting regulations*".
	2. *Audit Reform and Corporate Governance Bill*. On 17 July 2024, the King's Speech announced that the Government will publish a draft Audit Reform and Corporate Governance Bill. The background briefing notes highlight that the Bill will replace the FRC with the Audit, Reporting and Governance Authority and, to quote the Government, it will give this new regulator "*powers to investigate and sanction company directors for serious failures in relation to their financial reporting and audit responsibilities, so there are consequences for putting forward dodgy accounts*" and put in place "*a regime to oversee the audit market, protect against conflicts of interest at audit firms, and build resilience so quality audit is available to all companies that need it*". The FRC has welcomed the announcement.
	3. *IoD consultation on a code of conduct for directors*. On 16 August 2024, a working group of the Committee, led by Allan Taylor, submitted a response to the IoD's consultation on a code of conduct for directors (attached to the covering email to this agenda).
2. **Discussions**
	1. *New public offers and admissions to trading regime*. On 26 July 2024, the FCA announced the launch of its consultations on: (i) the new Public Offers and Admission to Trading Regulations regime (POATRs) (CP24/12) (see also the FCA consultation webpage), which will replace the UK prospectus regime; and (ii) the new public offer platform regime (CP24/13) (see also the FCA consultation webpage), which will allow authorised firms to facilitate companies making public offers of securities to investors outside public markets when raising more than £5m. These reforms will help companies make public offers of securities to investors, including retail consumers. The Joint Prospectus and Listing Rules Working Group will be responding to these consultations, which close on 18 October 2024. The Joint CLLS/Law Society Takeovers Working Group is also planning to have a separate discussion on some of the proposals in CP24/12.
	2. *Virtual AGMs*. Further to the meeting of the Committee held in July, the Chair to lead discussions on virtual and electronically enabled AGMs.
	3. *FCA thematic review on notifications of delayed disclosure of inside information*. As reported at the meeting of the Committee held in July, the FCA is carrying out a thematic review focussed on notifications of delayed disclosure of inside information and had requested an outreach meeting with the Committee as it is seeking practical knowledge and experience of delaying disclosure of inside information and completing and submitting the delayed disclosure notification form to the FCA. Victoria Younghusband to update the Committee on the call between the FCA and members of the FCA/CLLS CLC Liaison Committee held on 5 August 2024.
3. **Recent developments**
	1. **Company law**
		1. *Companies House to join GOV.UK One Login*. On 4 September 2024, Companies House announced that its online services will start moving to GOV.UK One Login from autumn 2024. The press release states that "Find and update company information" will be the first Companies House service to use GOV.UK One Login and the Companies House WebFiling service will move to GOV.UK One Login at a later date. It also states that people will be able to use GOV.UK One Login to verify their identity directly with Companies House.
		2. *Companies House business plan*. On 12 August 2024, Companies House published its business plan for 2024 to 2025, which includes an outline of what it plans to deliver in relation to ECCTA from April 2024 to March 2025.
		3. *Companies House annual report and accounts*. On 30 July 2024, Companies House published its annual report and accounts for the period from 1 April 2023 to 31 March 2024. Section 4 includes information on the new civil financial penalties regime.
		4. *The Dormant Assets Scheme*. On 17 July 2024, the Government published Securities – Adjoining Articles and Explanatory Notes. These materials serve as a starting point for traded public companies seeking to participate in the UK Dormant Assets Scheme in respect of securities assets and contain draft explanatory notes for inclusion in a circular to shareholders proposing changes to a company's articles of association to facilitate participation in the scheme and draft articles for inclusion in a company's articles of association.
	2. **Corporate governance**
		1. *LAPFF and CCLA letter on climate action transition plan vote*. On 10 September 2024, Local Authority Pension Fund Forum (**LAPFF**) and impact investment management firm CCLA wrote to the chairs of 76 FTSE 100 companies that have not held a vote on their climate transition plans at their shareholder meetings in the last three years. The letter states that investors expect companies to set out credible plans that align with the Paris Agreement goal of trying to limit warming to 1.5C and include detailed strategies on how to achieve them. The letter also highlights that emerging industry guidance, including from the Transition Plan Taskforce, recommends companies produce or update their climate strategies every three years and that, in line with these recommendations, LAPFF and the CCLA expect companies to provide their investors with a vote on their plans at least every three years. The letter also notes that around a fifth of FTSE 100 companies (excluding investment trusts) have already provided their shareholders the opportunity to approve their climate plans.
		2. *Wates Corporate Governance Principles for Large Private Companies*. On 12 August 2024, the FRC announced the publication of a second assessment of the quality of reporting by private companies which have chosen to follow the Wates Corporate Governance Principles for Large Private Companies.
		3. *FRC updates the UK Stewardship Code*. On 22 July 2024, the FRC announced that it is making interim changes to the UK Stewardship Code to significantly reduce the reporting burden on existing signatories. These reporting changes will apply for the next application window (31 October 2024). The FRC also states that it is committed to five priority areas of review as it continues its revision of the Code and will launch a formal public consultation on the Code later this year. The FRC has also published FAQs on the interim reporting measures and clarifications for UK Stewardship Code signatories.
	3. **Reporting and disclosure**
		1. *FRC discussion paper on the future of digital reporting in the UK*. On 13 August 2024, the FRC announced the launch of a discussion paper on the future of digital reporting in the UK. The paper addresses changes in the regulatory landscape and considers the impact of ECCTA. The FRC requests responses by 1 November 2024.
		2. *European Commission provides further clarifications on EU corporate sustainability reporting rules*. On 7 August 2024, the European Commission announced the publication of FAQs to support stakeholders in the implementation of the EU corporate sustainability reporting rules.
		3. *FRC consultation on going concern guidance*. On 5 August 2024, the FRC announced the publication of a consultation on revisions to its Guidance on the Going Concern Basis of Accounting and Related Reporting, including Solvency and Liquidity Risks. The consultation closes on 28 October 2024.
		4. *PERG and BVCA consultation on the Walker Guidelines*. On 31 July 2024, the Private Equity Reporting Group (**PERG**) and the British Private Equity & Venture Capital Association (**BVCA**) announced the launch of a consultation on amendments to the Walker Guidelines for Disclosure and Transparency in Private Equity. The consultation closes on 30 September 2024.
	4. **Equity capital markets**
		1. *LSE dividend procedure timetable 2025*. On 13 September 2024, the LSE published its dividend procedure timetable 2025.
		2. *CMIT report*. On 6 September 2024, the Capital Markets Industry Taskforce (**CMIT**) announced the publication of its report on the Capital Markets Of Tomorrow, which is intended to create a model which will help deliver long term growth for the UK economy.
		3. *FCA consultation on enhancing the National Storage Mechanism*. On 9 August 2024, the FCA announced the publication of a consultation on enhancing the National Storage Mechanism (CP24/17). The FCA wants to introduce more comprehensive data requirements to improve the NSM’s functionality to make it easier for NSM users to find information submitted by regulated market issuers. The consultation closes on 27 September 2024.
		4. *FCA enforcement guidance consultation*. On 5 August 2024, the House of Lords Financial Services Regulation Committee announced that it has reopened its inquiries into the FCA’s consultation paper CP24/2 on publicising enforcement investigations and the call for evidence in relation to this inquiry. The call for evidence closes on 11 October 2024.
		5. *Final rules on new payment option for investment research*. On 26 July 2024, the FCA announced the publication of PS24/9 on the payment optionality for investment research, which sets out the FCA's final rules for a new option to pay for investment research.
		6. *FTSE Russell Insights*. On 12 July 2024, FTSE Russell published an article explaining the implications of the changes to the UK listing regime for the FTSE UK Index Series, along with a summary and frequently asked questions.
		7. *LSE Market Notice N06/24*. On 11 July 2024, the LSE published Market Notice N06/24 which announces that the LSE's Admission and Disclosure Standards will be amended on 29 July 2024 following the changes made to the Listing Rules by the FCA (which also took effect on 29 July). The amendments are set out in a blackline of the LSE's Admission and Disclosure Standards.
	5. **MAR**
		1. No items to consider.
	6. **Auditing and accounting**
		1. No items to consider.
	7. **Takeovers**
		1. *MWB Group Holdings plc*. On 30 July 2024, the Takeover Appeal Board published Statement 2024/1 in which it confirms that three individuals must pay compensation of approximately £33m to former shareholders as a result of acquiring control of MWB Group Holdings plc while deliberately attempting to circumvent the application of Rule 9 by concealing a covert concert party (dismissing the appeal by Mr Balfour-Lynn). The Takeover Panel also published: (i) Panel Statement 2024/16 which sets out the Hearings Committee's Rulings of 22 December 2023 and 16 February 2024 in respect of MWB Group Holdings plc which were appealed to the Takeover Appeal Board by Mr Balfour-Lynn and which are the subject of Statement 2024/1; and (ii) Panel Statement 2024/17 which contains the Panel Executive's summary of the outcome of the proceedings before the Hearings Committee and the Takeover Appeal Board.
	8. **Miscellaneous**
		1. *Property (Digital Assets etc) Bill*. On 11 September 2024, the Ministry of Justice announced that the Property (Digital Assets etc) Bill had been introduced to Parliament (see also the draft Explanatory Notes). This Bill introduces a third category of "thing" to allow for certain digital assets to attract personal property rights. The introduction of this Bill follows the publication of the Law Commission's supplemental report and draft Bill on digital assets as personal property in July 2024. The Law Commission has also published a press release on the introduction of this Bill.
		2. *NSI Act Annual Report 2023-24*. On 10 September 2024, the Cabinet Office published the National Security and Investment Act annual report 2023-24, which covers the reporting period from 1 April 2023 to 31 March 2024.
		3. *Report on the future of European competitiveness*. On 9 September 2024, the European Commission announced the publication of a report on the future of European competitiveness, prepared by Mario Draghi, a former European Central Bank President. The report comprises two parts: (i) Part A - A competitiveness strategy for Europe; and (ii) Part B – In-depth analysis and recommendations.
	9. **Cases**
		1. *Syspal Capital Limited v (1) Mr Christopher John Truman (2) Syspal Holdings Limited [2024] EWHC 1561 (Ch)*. The High Court had to interpret a leaver provision in a company's articles of association which provided that "*If any Employee Member shall cease for any reason… to be employed as an employee, director or consultant of a Group Company (and does not continue in that capacity in relation to any Group Company) then a Transfer Notice shall be deemed to have been served…*". Describing the relevant article as not entirely clear, the judge held that a notice for the transfer of shares was not deemed to be served when a member was dismissed as an employee of a group company because he continued to be a director of another group company. The judge considered that the reference in parenthesis to not continuing "*in that capacity*" relates back to the three capacities set out immediately beforehand and is not a reference only to the capacity which the "Employee Member" previously held. Under the terms of the articles, the member was therefore entitled to receive the higher "Fair Value" for his shares rather than the "Market Value" of his shares.
		2. *Andre Bland and Janet Francis Mayo v Jeanette Keegan [2024] EWCA Civ 934*. The Court of Appeal held that the identity of the members of a company for the purposes of determining the validity of written resolutions resolving to voluntarily wind up the company and appoint liquidators was to be determined by the entries in the company's register of members (**ROM**) at the relevant time. The Court of Appeal considered that Lord Collins' explanation in *Enviroco Limited v Farstad Supply A/S [2011] UKSC 16* that a "*fundamental principle of United Kingdom company law*" is that "*except where express provision is made to the contrary, the person on the register of the members is the member to the exclusion of any other person, unless and until the register is rectified*" should apply for the purposes of determining the validity of members' resolutions, even in a case where a member's name has been wrongly removed from the ROM as a result of forgery or fraud. The Court of Appeal noted that the court has the power when making an order for rectification of the ROM, so far as legally possible, to undo the effects of any misconduct (such as forgery or fraud), to order compensation to be paid or to determine how losses should be fairly allocated between innocent parties (such as the liquidators who had already incurred significant fees and expenses). Therefore, the court held that the written resolutions were validly passed by the sole shareholder on the ROM even though she had acquired 50% of the company's shares by executing a stock transfer form without the transferor's authority leading to the transferor's name being wrongly removed from the ROM.
		3. *Literacy Capital Plc v Vanessa Jane Webb [2024] EWHC 2026 (KB)*. Notwithstanding the general rule that such matters are best considered at trial and not at the interlocutory injunction stage, the High Court found that the restrictive covenants in an investment agreement were unarguably void, and so dismissed an interim junction application to enforce them. The judgment sets out a useful summary of the common law restraint of trade provisions, which the judge found applied to the restrictive covenants on the basis that they arose from the defendant's status as an employee of the claimant (an investment company that had indirectly acquired her shares in another company (**Mountain**)) and as a founder and grower of the business carried on by Mountain and as vendor of that business to the claimant (i.e. it was not arguable that the investment agreement was a purely commercial agreement unrelated to any matter which would likely attract restraint of trade). The High Court found that the non-compete in question reached far beyond any legitimate protectable interest, covering all of the claimant's businesses (not just Mountain). The 8-10 year duration of the restrictive covenants was also far past the duration allowed in ex-employee cases and in sale of business cases. Finally the nationwide geographical scope was not justified by the claimant providing any evidence of the geographical scope of Mountain's contracts beyond Norfolk and Suffolk. The judge did consider whether the restrictive covenants were severable, but could not see how they could be properly severed in a simple and clean way.