THE CITY OF LONDON LAW SOCIETY  
COMPANY LAW COMMITTEE

Minutes

for the 332nd meeting  
at 5:00 p.m. on 26th March 2025  
at Clifford Chance LLP, 10 Upper Bank Street, London E14 5JJ

1. **Welcome and apologies**

*In attendance*: Adam Bogdanor (*Bryan Cave Leighton Paisner LLP*); Tom Brassington (*Hogan Lovells International LLP*); Richard Burrows (*Macfarlanes LLP*); Caroline Chambers (alternate for Jamie Corner, *Simmons & Simmons LLP*); Andrew Edge (*Taylor Wessing LLP*); Lucy Fergusson (*Linklaters LLP*); Chrissy Findlay (*Pinsent Masons LLP*); Sarah Hawes (alternate for Caroline Rae, *Herbert Smith Freehills LLP*); James Innes (*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*); Jon Perry (*Norton Rose Fulbright LLP*); David Pudge (Chair, *Clifford Chance LLP*); Lucy Reeve (*Chair of the Law Society Company Law Committee*); Matthew Triggs (alternate for Ben Perry, *Sullivan & Cromwell LLP*); Adrian West (*Travers Smith LLP*); Simon Witty (*Davis Polk & Wardwell London LLP*); and Victoria Younghusband (*Charles Russell Speechlys LLP*).

*Apologies*: Jamie Corner (*Simmons & Simmons LLP*); Kevin Hart (*City of London Law Society*); Nicholas Holmes (*Ashurst LLP*); Ben Perry (*Sullivan & Cromwell LLP*); Caroline Rae (*Herbert Smith Freehills LLP*); Matthew Rous (*City of London Law Society*); Allan Taylor (*White and Case LLP*); Simon Tysoe (*Slaughter and May*); Liz Wall (*A&O Shearman LLP*); and Simon Wood (*Addleshaw Goddard LLP*).

1. **Approval of minutes**

The Chair noted that a draft version of the minutes of the meeting held on 29 January 2025 was circulated to members on 7 March 2025. The Chair noted that the minutes are considered settled.

1. **Matters arising**
   1. *FCA enforcement guidance consultation*. The Chair reported that on 17 February 2025 the Committee submitted a short response to the FCA's further consultation on enforcement transparency proposals (CP 24/2, Part 2), which endorses the response of the CLLS Regulatory Law Committee to CP 24/2, Part 2. The Chair noted that both responses raised the continued concerns of these committees with the FCA's proposals. The Chair then reported that on 12 March 2025 the FCA announced the publication of its letter to the House of Commons Treasury Select Committee in which the FCA confirmed that it would not take forward its proposal to shift from an exceptional circumstances test to a public interest test for announcing investigations into regulated firms. It was noted that this change in approach reflects the feedback received in response to CP 24/2, Part 2 and follows the publication of the House of Lords Financial Services Regulation Committee's report on the FCA's proposals to publicise enforcement investigations. The Chair also reported that the FCA intends to proceed with some limited aspects of its proposals, including:

* reactively confirming investigations which are officially announced by others, being typically market announcements by firms or another regulator;
* making public announcements to draw attention to potentially unlawful activities of unregulated firms and regulated firms operating outside the regulatory perimeter, where doing so protects consumers or furthers the investigation; and
* publishing greater detail of issues under investigation on an anonymous basis to highlight areas of concern in order to send a message to the market.
  1. *FCA consultation on the regulatory framework for PISCES*. The Chair reported that on 17 February 2025 the Joint Prospectus and Listing Rules Working Group submitted a response to the FCA's consultation on Private Intermittent Securities and Capital Exchange System (PISCES): Sandbox Arrangements (CP 24/29). In Nicholas Holmes' absence, Simon Witty updated the members of the Committee as follows in respect of the JWG's response:
* Respondents to the HMT consultation on PISCES in March 2024 raised concerns with the proposal that the disclosure regime for PISCES companies would be based on UK MAR rather than building on private market practices.
* The FCA has met these concerns by proposing a bespoke disclosure regime which would require PISCES companies to disclose a set of core information. This would be supplemented by an overarching requirement for PISCES operators to put in place disclosure arrangements that require the provision of additional information by PISCES companies to investors to ensure the efficient and effective functioning of their market. The FCA proposes that PISCES operators would be required to share these additional disclosure arrangements during the application process and that they may be based on a 'sweeper-model' or an 'ask-model'. The main thrust of the comments of the JWG in its response were focussed on these proposals.
* The JWG's view is that the core information disclosures are too prescriptive for a market of this type and that some of the core disclosures are not necessarily useful or relevant to investors. The JWG's view is that the mandatory list of core disclosures should be reduced, particularly where it is proposed that the disclosure regime includes a soft-form of "sweeper" provision.
* The JWG is not supportive of the 'ask-model' (i.e., arrangements overseen by the PISCES operator that facilitate the provision of information by a PISCES company in response to specific requests by PISCES investors for the purposes of assisting them in deciding whether to trade in the PISCES company’s admitted PISCES shares) and considers that it would only be appropriate for certain bespoke situations.
* The JWG proposes that a modified, soft-form of sweeper should be introduced, which would require directors and/or senior managers of a PISCES company to consider whether, in addition to the core information disclosures, there are matters of which they are aware that would be relevant to an investor's investment decision and to disclose any such matters. The JWG suggests that this modified sweeper would avoid investor harm without imposing disproportionate obligations on PISCES companies.
* The JWG raises a concern that over time operator portals could become heavily polluted with information which is no longer relevant and suggests that PISCES companies should be required to review and filter the information available on the portal to determine whether it remains material and relevant or to highlight its historic nature.
* The JWG also raises concerns around the FCA's proposals in respect of legitimate omissions of core information disclosures by PISCES companies and post-trade event disclosure requirements.
  1. *Frischmann v Vaxeal Holdings SA [2023] EWHC 2698 (Ch)*. The Secretary reported that the note prepared by the CLLS Financial Law Committee on whether an attorney can execute a s.136 Law of Property Act 1925 legal assignment on behalf of an English or overseas company or an English LLP, which was endorsed by the Committee at the meeting of the Committee held in January 2025, has been published on the CLLS website.

1. **Discussions**
   1. *New public offers and admissions to trading regime – further FCA consultations*. The Chair reported that on 31 January 2025 the FCA announced the publication of two further consultations: (i) consultation on further changes to the public offers and admissions to trading regime and the UK Listing Rules (CP25/2); and (ii) consultation on further proposals for firms operating public offer platforms (CP25/3). It was noted that the FCA expects to make final rules in this area by summer 2025 and expects the rules to take effect by early 2026. The Chair noted that the Joint Prospectus and Listing Rules Working Group submitted a response to CP25/2 on 14 March 2025 and updated members of the Committee as follows:

* The JWG is broadly comfortable with the new Prospectus Rules: Admission to Trading on a Regulated Market sourcebook (PRM) rules.
* One area of concern relates to the FCA's proposal to remove the listing application process under the UKLRs for further issuances of securities of a class that has already been admitted to listing and to include instead a short notification obligation in the PRM (PRM 1.6) requiring an issuer to make an announcement to the market via an RIS for securities admitted to trading. The proposed new notification requirement under PRM 1.6 would appear to require an issuer to make an RNS announcement each time it allots new and issued shares for an employee share scheme, thereby requiring daily rather than aggregated six-monthly announcements.
* The FCA's proposal to remove Listing Particulars as an admission document to simplify the listing framework would appear to be unproblematic.
  1. *Sanctions and dividends/other corporate actions*. The Chair updated members of the Committee on the impact of sanctions on dividends and other corporate actions.
  2. *FCA PMB No. 54*. The Chair reported that on 14 March 2025 the FCA published Primary Market Bulletin No. 54 and that in this edition, amongst other things, the FCA covers the topic of strategic leaks and unlawful disclosure due to the FCA seeing an increase in instances where material information on live M&A transactions appears to have been deliberately leaked to the press. It was noted that the FCA highlights that, in many cases, the information leaked constituted inside information under article 7 UK MAR and resulted in a significant effect on the share price of the offeree company and/or the offeror. It was also noted that the FCA reminds issuers and their advisers of their responsibilities and states that it is concerned that a culture may have developed among market participants where strategically leaking inside information to the media is acceptable during a transaction. The Chair noted that key points coming out of PMB No. 54 are that clients need to reinforce the importance of maintaining the confidentiality of inside information on deals within their organisations and need to check that they have adequate policies, procedures and training in place for the handling of inside information.
  3. *FCA/CLLS CLC Liaison Committee meeting*. Victoria Younghusband led discussions on potential topics for the next FCA/CLLS CLC Liaison Committee meeting.

1. **Recent developments**

The Committee noted the following additional items in sections 5.1 to 5.9, with the Chair briefly commenting on the cases in section 5.9. The Secretary also commented on item 5.1(a), noting that: (i) UK AML-regulated firms can now register as an ACSP and need to do so if they want to provide identity verification services from 8 April or want to continue to make filings at Companies House on behalf of their clients once the restrictions on who can make filings at Companies House come into force in spring 2026; and (ii) individuals should be able to voluntarily verify their identity from 8 April either through Companies House (using an App or online) or through an ACSP. The Secretary noted that as the deadline for existing directors, PSCs and LLP members to verify their identity will be linked to the filing of the company's/LLP's next confirmation statement, when the IDV regime comes into force this autumn, some companies/LLPs/individuals will only have a few days to meet the deadline while others will have up to a year.

Members of the Committee also commented on item 5.3(e) on the EU Omnibus package of proposals to simplify rules on sustainability reporting and due diligence. It was noted that through this Omnibus package the European Commission to trying to ease the regulatory burden for SMEs from excessive sustainability information requests that they would receive where they are included in the value chains of large companies which fall in the scope of the CSRD and the CSDDD. It was noted that this is a helpful development for smaller UK companies that would have indirectly fallen, or will indirectly fall, within the scope of the EU legislation due to being in the value chain of in-scope companies. It was also noted that the European Commission will need to publish model contractual clauses to be entered into between in-scope companies and their business partners to support compliance with the EU legislation and that these model clauses should be reviewed once published.

* 1. **Company law**
     1. *Launch of registration of ACSPs and new Companies House guidance on identity verification*. On 18 March 2025, Companies House announced the launch of its new service that allows UK AML-regulated corporate service providers to apply to register as an Authorised Corporate Service Provider (**ACSP** or Companies House authorised agent). This follows an update to Companies House's transition plan for ECCTA on 12 March 2025 where it announced that it should be able to carry out checks on ACSPs to authorise them to carry out verification services from 18 March 2025 (after a short delay from the previously announced date of 25 February 2025). The expected date for allowing individuals to voluntarily verify their identity has also been postponed to 8 April 2025. On 18 March 2025, Companies House also published guidance on verifying your identity for Companies House. See also items 5.1(b), (d) and (e).
     2. *The Economic Crime and Corporate Transparency Act 2023 (Commencement No. 4) Regulations 2025*. The Economic Crime and Corporate Transparency Act 2023 (Commencement No. 4) Regulations 2025 were made on 13 March 2025. Amongst other things, these regulations: (i) brought into force sections 65 (procedure etc for verifying identity), 66 (authorisation of corporate service providers), 68 (allocation of unique identifiers) and 70 (registrar’s power to strike off company registered on false basis) of ECCTA 2023 on 18 March 2025; and (ii) bring into force sections 199 to 206 of, and Schedule 13 to, ECCTA 2023 (failure to prevent fraud) on 1 September 2025.
     3. *Closure of joint online filing service*. On 6 March 2025, Companies House announced that its joint online filing service, which enables companies to file their accounts and company tax returns with Companies House and HMRC at the same time, will close on 31 March 2026.
     4. *Companies House guidance on ACSPs and identity verification standard*. On 19 February 2025, Companies House published guidance on applying to register as a Companies House authorised agent, being an Authorised Corporate Service Provider and how to meet Companies House identity verification standard. On 13 March 2025, Companies House published a new blog on ACSPs.
     5. *Registrar's rules on identity verification*. On 5 February 2025, Companies House published The Registrar's (Identity Verification by the Registrar) Rules 2025, The Registrar's (Identity Verification by Authorised Corporate Service Providers) Rules 2025 and The Registrar's (Requirements Applicable to Applications to Become an Authorised Corporate Service Provider) Rules 2025.
  2. **Corporate governance**
     1. *Update report from the Parker Review*. On 11 March 2025, the Parker Review Committee published an update report which includes the results of its latest survey on the ethnic diversity of boards and senior management of FTSE 350 companies and large private companies.
     2. *FTSE Women Leaders Review report*. On 25 February 2025, the FTSE Women Leaders Review and the Government announced the publication of the latest report on gender balance on boards and leadership teams of the FTSE 350 and 50 of the UK's largest private companies.
     3. *The Risk Coalition risk governance guidance*. On 21 February 2025, the Risk Coalition announced the publication of its new cross-sector risk governance guidance for boards and committees with consolidated risk responsibility.
     4. *Independent Anti-Slavery Commissioner strategic plan 2024 to 2026*. On 11 February 2025, the Independent Anti-Slavery Commissioner published its strategic plan for 2024 to 2026, as presented to Parliament.
     5. *PLSA Stewardship and Voting Guidelines 2025*. On 23 January 2025, the Pensions and Lifetime Savings Association announced the publication of its Stewardship and Voting Guidelines 2025.
  3. **Reporting and disclosure**
     1. *Equality (Race and Disability) Bill: mandatory ethnicity and disability pay gap reporting*. On 18 March 2025, the Government announced the publication of a consultation that seeks views on how to introduce mandatory ethnicity and disability pay reporting for large employers (those with 250 or more employees). The Government states that responses to the consultation will help to shape proposals which will be included in the upcoming Equality (Race and Disability) Bill, which was announced in the King’s Speech in July 2024. The consultation closes on 10 June 2025.
     2. *FRC launches public beta of digital tool to transform access to company data*. On 10 March 2025, the FRC announced the public beta launch of its digital reporting Viewer, which is a new tool designed to improve free access to structured company reporting data.
     3. *Draft Companies (Directors’ Remuneration and Audit) (Amendment) Regulations 2025*. On 5 March 2025, the draft Companies (Directors' Remuneration and Audit) (Amendment) Regulations 2025 and draft explanatory memorandum were published for sifting under section 14 of the Retained EU Law (Revocation and Reform) Act 2023. These regulations will remove certain over-lapping requirements from the directors’ remuneration reporting framework and also clarify certain powers of the UK audit regulator.
     4. *Updated DBT guidance to reporting on payment practices and performance*. On 5 March 2025, DBT updated its guidance to reporting on payment practices and performance to reflect regulatory changes. See also item 5.3(g).
     5. *EU Omnibus package of proposals to simplify rules on sustainability reporting and due diligence*. On 26 February 2025, the European Commission announced the publication of a package of proposals to simplify EU rules, boost competitiveness and unlock additional investment capacity. These first 'Omnibus' packages contain proposals for simplification in the areas of sustainability reporting, sustainability due diligence, EU Taxonomy and carbon border adjustment mechanism. The 'Omnibus' package includes: (i) a proposal for a Directive amending the CSRD and the CSDDD; and (ii) a proposal for a Directive which postpones the application of all reporting requirements in the CSRD for companies that are due to report in 2026 and 2027 and which postpones the transposition deadline and the first wave of application of the CSDDD by one year to 2028. The European Commission has published Q&A.
     6. *Updated FRC guidance to support going concern reporting*. On 25 February 2025, the FRC announced the publication of updated guidance on the "Going Concern Basis of Accounting and Related Reporting, including Solvency and Liquidity Risks". The FRC has also published a feedback statement to its consultation on the exposure draft and a short summary document.
     7. *The Reporting on Payment Practices and Performance (Amendment) Regulations 2025*. The Reporting on Payment Practices and Performance (Amendment) Regulations 2025 were made on 23 January 2025 (see also the explanatory memorandum). These regulations are in largely the same form as the draft laid before Parliament in October 2024, which was noted at the meeting of the Committee held in November 2024. These regulations came into force on 1 March 2025 and the new reporting requirements apply in relation to financial years beginning on or after 1 April 2025.
  4. **Equity capital markets**
     1. *Minor amendments to UKLRs*. On 7 March 2025, the FCA announced the publication of its Quarterly Consultation Paper No. 47 (CP25/4). The FCA is proposing to amend UKLR 11.5.5R (relevant related party transactions) to include a requirement from the old Listing Rules (LR 11.1.7R(4)) which, in summary, had the effect of requiring the company to exclude the related party and their associates from voting on the shareholder resolution on the related party transaction. The FCA is proposing this change to UKLR 11.5.5R in order to correct an unintended omission.
     2. *Updates to the FTSE UK Index Series*. On 3 March 2025, FTSE Russell announced two updates to the FTSE UK Index Series Ground Rules and eligibility criteria, which will become effective at the September 2025 index review, being: (i) the thresholds for "Fast Entry" will be lowered to allow more companies, particularly those conducting significant IPOs, to be included intra-quarter. Companies with a market capitalisation ranking of 225th or above and a minimum investable market capitalisation of GBP 1 billion will be eligible; and (ii) the requirement for securities to trade exclusively in GBP will be removed. Securities trading in Euro or USD will be eligible, provided they meet all other index eligibility criteria including the UK nationality of a company. FTSE Russell has published FAQs.
     3. *UK to move to T+1 settlement*. On 6 February 2025, the UK Accelerated Settlement Taskforce (**AST**) announced the publication of its implementation plan for the UK’s transition from T+2 to T+1 securities settlement. On 19 February 2025, HMT published its response to AST's implementation plan confirming that the Government has accepted all recommendations made by AST, including that T+1 should come into effect in the UK on 11 October 2027. See also HMT's press release, the FCA's press release and the FCA webpage about T+1 settlement. On 12 February 2025, the European Commission announced that it has proposed a targeted legislative amendment to the EU Central Securities Depositories Regulation to shorten the duration of the settlement cycle to T+1.
     4. *AIC 'My share, my vote' campaign*. On 29 January 2025, the Association of Investment Companies (**AIC**) announced the launch of its campaign to ensure all investors can exercise their right to vote their shares. This campaign seeks to end poor practices among some investment platforms and providers, such as failing to pass on voting rights and information, charging customers to vote and declining to vote shares even when requested to do so. AIC has written to DBT to call for a change in company law so that nominees, including retail investor platforms, must offer information and voting rights to the beneficial holders of shares.
  5. **MAR**
     1. See minute 4.3.
  6. **Auditing and accounting**
     1. *FRC market study into SME audit and reporting challenges*. On 3 February 2025, the FRC announced the launch of a market study that examines how effectively the audit market serves small and medium-sized enterprises and explores opportunities to reduce their reporting burden where possible. The closing date for responses is 25 April 2025.
  7. **Takeovers**
     1. *Takeover Panel notes to advisers*. On 3 February 2025, the Takeover Panel published a new note to advisers in relation to cancellation of admission to trading and an updated note to advisers in relation to re-registering a public company as a private company. The Takeover Panel also updated its webpage for Companies to which the Code applies. These changes reflect the new jurisdictional framework for the Takeover Code, which took effect on 3 February 2025.
  8. **Miscellaneous**
     1. *HMT's new approach to ensure regulators and regulation support growth*. On 17 March 2025, HMT announced the publication of a policy paper entitled "New approach to ensure regulators and regulation support growth" that sets out the Government's plan to cut red tape and kickstart economic growth.
     2. *Updated BVCA model documents for early stage VC investments*. On 26 February 2025, the BVCA announced that it has revised its model documents for early stage venture capital investments.
     3. *Expansion of identification doctrine to all offences*. On 25 February 2025, the Crime and Policing Bill was introduced to Parliament (see also the Explanatory Notes). Clause 130 of this Bill expands further the identification doctrine to enable a corporate body or partnership to be held criminally liable where a senior manager commits *any* offence under the law of England and Wales, Scotland or Northern Ireland while acting within their actual or apparent authority. The provisions in clause 130 would replace the provisions in ECCTA that expanded the identification doctrine in 2023 but only in respect of economic crime offences.
     4. *The Water (Special Measures) Act 2025*. On 24 February 2025, the Water (Special Measures) Bill received Royal Assent, becoming the Water (Special Measures) Act 2025. See also the policy paper on the Water (Special Measures) Act published by the Department for Environment, Food & Rural Affairs. This Act delivers on the Government’s promises by, amongst other things, blocking bonuses for executives of companies that pollute the UK's waterways.
     5. *The Arbitration Act 2025*. On 24 February 2025, the Arbitration Bill received Royal Assent, becoming the Arbitration Act 2025. This Act introduces limited reforms to the Arbitration Act 1996, which are based closely on the Law Commission's final proposals in 2023. See the Ministry of Justice's press release and the Law Commission's press release.
     6. *Cyber Governance Code of Practice*. On 31 January 2025, the Department for Science, Innovation and Technology announced the publication of its response to its call for views on a code of practice for cyber governance. The aim of the Cyber Governance Code of Practice is to help businesses and organisations manage the cyber risks they face. The Government is committed to publishing the full Cyber Governance Code of Practice in early 2025. On 5 March 2025, the Department for Science, Innovation and Technology published a research report detailing results from a pilot of the proposed Cyber Governance Code of Practice.
     7. *The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) Regulations 2025*. On 27 January 2025, the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) Regulations 2025 were laid before Parliament, together with an explanatory memorandum. These regulations came into force on 27 February 2025 and make consequential amendments to secondary legislation to replace references to "retained EU law" with "assimilated law" and remove references to general principles of EU law.
  9. **Cases**
     1. *Key Choice Financial Planning Limited v Timothy Evoy [2025] EWHC 4 (Ch)*. The High Court held that the purported forfeiture by a company of a shareholder's fully paid shares pursuant to bespoke provisions on calls on shares and forfeiture in the company's articles of association was ineffective. The High Court held that the power of forfeiture under the company's articles of association was limited to calls in respect of unpaid capital on specific shares and did not extend to any other sums of money owed by a shareholder to the company. Although the article that authorised the issue of call notices was expressed to apply to any specified sum of money payable by the member to the company (and was not expressly limited to sums payable "*in respect of shares which that member holds*" as is the case in the equivalent article of the Model Articles for Public Companies), other articles (including the articles that provided the power of forfeiture) contained wording such as *'in respect of whose shares the call is made*' or some form of it, which the judge determined tied the call or forfeiture to the shares in respect of which the sum was due.
     2. *(1) Macdonald Hotels Limited (2) Macdonald Botley Park Limited v Bank of Scotland plc [2025] EWHC 32 (Comm)*. This High Court judgment contains some *obiter* comments in respect of the "face value" requirement for deeds in section 1(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1989 (see paragraphs 234 to 247). The judge considered that, for multi-party deeds, section 1(2)(a) requires that the document makes it clear on its face that it is intended to be a deed by *all* the parties to it. The judge determined that a document that calls itself a deed but contains a statement by only *some* of the parties to it that they intend it to be a deed in combination with the other parties not including such a statement and not executing the document as a deed does not satisfy the "face value" requirement in section 1(2)(a). In this case, the judge's view was that the relevant document (which described itself as being "*made as a deed on 19 March 2014*") was not a deed because it contained a statement that only *some* of the parties intended the document to be a deed and this did not satisfy the requirements of section 1(2)(a). The judge commented that the following statement used in another document would satisfy the requirements of section 1(2)(a): "*It is intended by the parties hereto that this amendment agreement shall take effect as a deed notwithstanding that the parties hereto may execute this deed under hand.*".
     3. *EE Ltd v Virgin Mobile Telecoms Ltd [2025] EWCA Civ 70*. The Court of Appeal upheld the High Court's decision that EE's claim for lost revenues resulting from Virgin Mobile's alleged breach of an exclusivity clause in a telecommunications supply agreement (**TSA**) was a claim for loss of profit and was therefore precluded by an exclusion clause that provided that neither party would have liability to the other in respect of "anticipated profits". EE had sought to argue that the High Court should have held (or proceeded on the assumption) that it had provided the services required of it under the TSA and that its claim was one for the diminution in price payable under the TSA, not for lost profits. The Court of Appeal considered that the core issue between the parties was whether a claim in respect of "anticipated profits" (and thus one precluded by the exclusion clause) meant a claim for loss of profit *other than* expectation loss (i.e. the loss in value to EE of the contractual performance which would have been provided by Virgin Mobile but for its alleged breach of contract). The majority judgment held (amongst other things) that there is no overarching principle of law that limits an exclusion of liability for loss of anticipated profits to losses other than expectation loss or diminution in price and that the wording of the exclusion in this case was clear and unequivocal, and therefore EE's claim was precluded by the exclusion clause (with other substantive remedies to enforce its contractual rights, such as damages or equitable relief, available to it). In a dissenting judgment, Phillips LJ considered that the term "anticipated profits" indicates profits which would arise as a consequence of, but outside, performance of a contract, not sums directly payable under the contract.
     4. *Hughes v CSC Computer Sciences Ltd [2025] EWHC 302 (Comm)*. The High Court held that the requirement in an SPA for the Buyer to "*submit*" to the Sellers its determination of the amounts due under an earn-out was subject to the formal notice provisions in the SPA governing "*any notice or other communication under or in connection*" with the SPA. The Buyer had sought to argue that, on a natural and ordinary reading of "*submit*", it was entitled to serve its earn-out determination however it saw fit, in contrast to other provisions in the SPA that required one party to "*notify*" the other (in some cases "*in writing*"), and that the use of such language in relation to some provisions and not others demonstrated an intention on the part of the parties that the relevant clauses would be subject to different notice requirements. The High Court disagreed, finding that the words used in the formal notice provisions were extremely general ("*communications*" in particular), and that it would be undesirable to draw fine distinctions between different forms of communication given the importance of ensuring that parties to commercial contracts have clarity as to how they are expected to correspond. In addition, it would have been illogical and undesirable to hold that formal notice provisions that are presumably intended to apply to communications of contractual significance were not applicable to earn-out determinations, given their importance in dealing with the consideration payable for the business.

The Chair noted that this decision is a good reminder that a contractual party should make sure that they review the notice provisions carefully before communicating with any other contractual party to ensure that any communications are sent by the method and to the person agreed in the notice provisions.

* + 1. *H&P Advisory Limited v Barrick Gold (Holdings) Limited [2025] EWHC 562 (Ch)*. The High Court allowed a claim by investment bank H&P Advisory (**H&P**), based on unjust enrichment, and ordered payment of compensation of US$2 million to H&P by Barrick Gold (**BG**). This sum was in recompense for unpaid work by H&P's Ian Hannam that had enriched BG, as a potential client of H&P, by facilitating the merger of BG and Randgold Resources. In early 2018, H&P had worked for BG to initiate the merger, on the assumption that H&P would later be remunerated on an industry-standard basis. The High Court rejected H&P's claim that there had been an oral contract for services. The High Court noted that an unjust enrichment claim has four limbs. The third limb was the key issue: was the enrichment at the claimant's expense unjust? This test was to be judged against the 'relatively unusual practices' regarding fee arrangements in the investment banking market, summarised in paragraphs 93 to 96 of the judgment. The High Court found that H&P had been led to believe it was 'on the ticket', meaning it was entitled to expect a contract from BG and as this did not materialise, H&P had a claim for unjust enrichment covering the value of work done before and after it was 'on the ticket' (being US$2 million).

7 May 2025