

THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 333rd meeting
at 9:00 a.m. on 28th May 2025

1. Welcome and apologies

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

Apologies: Chrissy Findlay (*Pinsent Masons LLP*); Nicholas Holmes (*Ashurst LLP*); Stephen Mathews (*A&O Shearman LLP*); Juliet McKean (Secretary, *Clifford Chance LLP*); and Matthew Rous (*City of London Law Society*).

2. Approval of minutes

The Chair noted that a draft version of the minutes of the meeting held on 26 March 2025 was circulated to members on 7 May 2025. No comments had been received and the Chair noted that the minutes were therefore considered settled.

3. Matters arising

- 3.1 *Modernisation of the stamp taxes on shares framework.* The Chair reported that on 28 April 2025, HMRC published a summary of responses to its consultation on the modernisation of the stamp taxes on shares framework. HMRC notes that for the vast majority of questions it will be proceeding with its proposals as outlined in the consultation document, including the removal of the £1,000 *de minimis* that currently exists for stamp duty. HMRC intends to publish draft legislation in due course and is aiming to introduce a single tax on securities to replace stamp duty and SDRT, its legislative framework and a new online portal for the reporting and payment of the single tax in 2027. HMRC also launched a further consultation that seeks views on proposals to modernise the 1.5% higher rate charge which applies in certain

circumstances when UK securities are transferred overseas, with a focus on reducing unnecessary legislation and improving clarity. This consultation closes on 21 July 2025.

- 3.2 *PISCES*. The Chair reported that on 10 April 2025, the FCA published an update on PISCES following the closure of its consultation on the potential impact of the feedback on its final rules to support firms who intend to operate a PISCES. The FCA has published this update to give firms sight of its thinking as they are working up their plans and to offer pre-application support to prospective PISCES operators. The Chair noted that on 15 May 2025, the Government laid before Parliament The Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System Sandbox) Regulations 2025. These regulations establish the legal framework for PISCES and come into force on 5 June 2025. The HMT press release states that the FCA will publish its rules underpinning PISCES shortly after the legislation comes into force. See also items 5.4(c) and 5.4(d).

- 3.3 *Expansion of identification doctrine to all offences*. The Chair reported that, as noted at the meeting of the Committee held in March 2025, clause 130 of the Crime and Policing 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. The CLLS Corporate Crime & Corruption Committee is considering whether to make representations regarding clause 130.

4. **Discussions**

- 4.1 *FCA/CLLS CLC Liaison Committee meeting*. Victoria Younghusband provided an update on the meeting with the FCA which had been held on 4 April 2025.
- 4.2 *PMSS/CLLS CLC Liaison Committee meeting*. The Chair reported that the FCA has suggested establishing a new CLLS CLC Liaison Group to interact with the Primary Markets Specialist Supervision (**PMSS**) team at the FCA, which is primarily responsible for the supervision of sponsors.
- 4.3 *Panel pre-consultation*. The Chair reported that the Panel has contacted the Joint CLLS/Law Society Takeovers Working Group regarding its pre-consultation on proposals to amend the Takeover Code to provide a framework for its application to companies with dual class share structures.
- 4.4 *Discussion paper on shaping the future of AIM*. The Chair reported that on 7 April 2025, the LSE published AIM Notice 59, which announced the publication of a discussion paper on shaping the future of AIM. Responses to the discussion paper must be received by 16 June 2025. The Chair noted that the Joint Prospectus and Listing Rules Working Group is preparing a response to this discussion paper.
- 4.5 *ARGA and enforcement of directors' duties*. The Chair updated the Committee on discussions at the recent Law Society Company Law Committee meeting which the ICAEW attended in order to outline their thinking on how the new ARGA regime should fit into the existing directors' duties enforcement landscape in the UK following

a mapping exercise that it has carried out. The position outlined by the ICAEW is that ARGA should be able to enforce directors' duties in the context of the preparation and publication of company accounts and this should not be limited, as is currently the case, to the ability to take action against directors who are also members of the accounting profession.

5. Recent developments

The Committee noted the following additional items in sections 5.1 to 5.9 as time did not allow a detailed discussion of these items.

5.1 Company law

- (a) *The Companies and Limited Liability Partnerships (Annotation) Regulations 2025.* The Companies and Limited Liability Partnerships (Annotation) Regulations 2025 were made on 12 May 2025 and laid before Parliament on 14 May 2025. These regulations provide for specific instances where the Registrar of Companies either can or must annotate information on the public register. The regulations come into force on 9 June 2025, other than the regulations relating to annotations relating to persons with significant control which come into force at the same time as section 790LA CA 2006 (duty to notify register of confirmed persons with significant control) comes into force.
- (b) *The Protection and Disclosure of Personal Information (Amendment) Regulations 2025.* A draft of the Protection and Disclosure of Personal Information (Amendment) Regulations 2025 was laid before Parliament on 14 May 2025. These regulations will widen the range of circumstances in which individuals may apply to the Registrar of Companies to protect their personal information where it appears on the public register. The regulations come into force on 21 July 2025 or on the day after the day on which they are made if made on or after 21 July 2025, other than the regulation amending the Overseas Companies Regulations 2009 which comes into force when section 167J CA 2006 (required information about a director: individuals) comes fully into force.
- (c) *Companies House identity verification.* On 8 April 2025, Companies House announced the launch of its new identity verification service to allow individuals to voluntarily verify their identity through Companies House or an ACSP. Companies House's identity verification guidance collection webpage contains its guidance on identity verification, including guidance published on 8 April entitled 'Verify your identity for Companies House' and 'Tell Companies House you have verified someone's identity'.
- (d) *The Companies Act 2006 (Recognition of Third Country Qualifications and Practical Training) (Amendment) Regulations 2025.* The Companies Act 2006 (Recognition of Third Country Qualifications and Practical Training) (Amendment) Regulations 2025 were made on 3 April 2025 and came into force on 14 May 2025. No substantive changes have been made to the draft regulations published in May 2024, which were noted at the meeting of the Committee held in May 2024.

5.2 Corporate governance

- (a) *IoD Commission on NEDs*. On 10 April 2025, the IoD announced that it has established a Commission to explore the evolving role of NEDs in the UK. The Commission will investigate whether NEDs are truly delivering the anticipated benefits and how they can better contribute to value creation. The Commission will run until July 2025 and report its findings in autumn 2025.

5.3 Reporting and disclosure

- (a) *FRC feedback statement on opportunities for future UK digital reporting*. On 15 May 2025, the FRC announced the publication of a feedback statement that sets out the FRC's summary of responses to its discussion paper entitled "Opportunities for Future UK Digital Reporting".
- (b) *ISSB consults on changes to IFRS S2*. On 28 April 2025, the International Sustainability Standards Board (ISSB) announced the publication of an exposure draft proposing targeted amendments to International Financial Reporting Standard S2 (Climate-related Disclosures) (IFRS S2) that would provide reliefs to ease application of requirements related to the disclosure of greenhouse gas emissions. The period for comment closes on 27 June 2025.
- (c) *Structured digital reporting – 2024/25 insights*. On 28 April 2025, the FRC announced the publication of its annual review of structured digital reporting, which highlights key areas for improvement in how UK listed companies present their digital annual reports.
- (d) *CSRD and CSDDD*. On 14 April 2025, the Council of the EU announced that it has given its formal approval to the 'Stop-the-Clock' Directive, which postpones the application dates of certain sustainability reporting requirements in CSRD and due diligence requirements in CSDDD, as well as the transposition deadline for CSDDD. This directive is part of the EU Omnibus package of proposals to simplify rules on sustainability reporting and due diligence. It was published in the EU's Official Journal on 16 April 2025 and entered into force on 17 April 2025. Member states must transpose this directive into their national legislation by 31 December 2025.
- (e) *The Companies (Directors' Remuneration and Audit) (Amendment) Regulations 2025*. The Companies (Directors' Remuneration and Audit) (Amendment) Regulations 2025 were made on 31 March 2025 and came into force on 11 May 2025. No changes have been made to the draft regulations published on 5 March 2025, which were noted at the meeting of the Committee held in March 2025. DBT has published a short guidance note on these regulations to clarify when the changes will apply in respect of directors' remuneration reports, policies and payments and how one of the changes impacts on future reporting comparing boardroom and employee pay.
- (f) *Updated Home Office statutory guidance on transparency in supply chains*. On 24 March 2025, the Home Office published an updated version of its statutory guidance on transparency in supply chains.

- (g) *Updated FRC guidance.* On 21 March 2025, the FRC announced the publication of updates to relevant existing publications to reflect the changes to UK reporting thresholds which came into effect on 6 April 2025 pursuant to the Companies (Accounts and Reports) (Amendment and Transitional Provision) Regulations 2024. The FRC has also published a summary document that outlines the changes.

5.4 Equity capital markets

- (a) *FCA PMB No. 55.* On 17 April 2025, the FCA published Primary Market Bulletin No. 55. In this edition, amongst other things, the FCA: (i) provides feedback on its consultation in PMB 53, finalises 44 technical and procedural notes (FG25/1), deletes one technical note (Primary Market/TN/630.2 - Choice of home member state under the PD) and deletes one procedural note (Primary Market/PN/905.3 – Passporting); (ii) consults on further proposed changes to four technical notes in its Knowledge Base to reflect the new listing regime (GC25/1); and (iii) consults on proposed updates and clarifications to Technical Note 507.1 'Structured digital reporting for annual financial statements prepared in accordance with International Financial Reporting Standards' (GC25/1).
- (b) *Corporate Governance Code (Amendment) Instrument 2025.* On 28 March 2025, the FCA published Handbook Notice 128 and Corporate Governance Code (Amendment) Instrument 2025 (FCA 2025/12). Amongst other things, this instrument makes various consequential amendments to the UKLRs and DTRs to reflect the 2024 UK Corporate Governance Code and came into force on 28 March 2025. Handbook Administration (No. 73) Instrument 2025 (FCA 2025/15), which also came into force on 28 March 2025, amends the UKLRs to remove various expired transitional provisions.
- (c) *PISCES: HMRC technical note on tax implications in relation to employees trading their shares on PISCES.* On 26 March 2025, HMRC published a technical note on the tax implications for companies and employees in relation to employees trading their shares on PISCES (which was updated on 15 May). On 15 May 2025, the Government confirmed that it will legislate in the next Finance Bill to allow employers, with their employee's permission, to amend existing Enterprise Management Incentives and Company Share Option Plan contracts to include a PISCES trading event as an exercisable event, without losing the tax advantages the schemes offer.
- (d) *PISCES: HMT consultation on stamp duty and SDRT exemption.* On 26 March 2025, HMT published a draft statutory instrument for technical consultation which provides exemption from stamp duty and stamp duty reserve tax for transfers of admitted PISCES shares in connection with trading that takes place on a PISCES under the Financial Market Infrastructure sandbox arrangements. The consultation closed on 23 April 2025.

5.5 MAR

- (a) *ESMA final report containing technical advice concerning MAR and MiFID II SME GM.* On 7 May 2025, ESMA announced the publication of its technical advice to the European Commission concerning MAR and MiFID II SME GM,

following changes to EU MAR and EU MiFID II introduced by the EU Listing Act. The advice covers protracted processes (identifying key moments for public disclosure) and delayed public disclosure (listing situations where delays are not allowed). The technical advice facilitates the effective implementation of the EU Listing Act by advising the European Commission on the delegated acts to be adopted and amended in relation to EU MAR and EU MiFID respectively and the European Commission will adopt the delegated acts for which the technical advice was requested by July 2026. It was noted that the implementation of these changes creates a divergence between UK MAR and the position set out in EU MAR and the related ESMA guidance.

5.6 Auditing and accounting

- (a) No items to consider.

5.7 Takeovers

- (a) See minute 4.3 and items 5.8(b) and 5.9(b).

5.8 Miscellaneous

- (a) *Consultation outcome on The Enterprise Act 2002 (Mergers Involving Newspaper Enterprises and Foreign Powers) Regulations 2024.* On 15 May 2025, the Department for Culture, Media and Sport (**DCMS**) published a response to its technical consultation last year on a draft of The Enterprise Act 2002 (Mergers Involving Newspaper Enterprises and Foreign Powers) Regulations 2024. A new foreign state influence regime for mergers involving newspapers and periodical news magazines came into force on 24 May 2024. A draft of the Enterprise Act 2002 (Mergers Involving Newspaper Enterprises and Foreign Powers) Regulations 2025, which has been laid before Parliament, contains exemptions to this regime for state-owned investors that indirectly hold no more than 15% of the shares or voting rights in the newspaper owner and for small shareholdings and/or retail investments made by associated persons in investment funds which hold financial stakes in UK newspaper enterprises. The exemptions will have retroactive effect and are to be treated as having come into force on 13 March 2024. On 15 May 2025, DCMS also published a response to its technical consultation on updating the media mergers regime, including a broader definition of "newspapers" in section 44 of the Enterprise Act 2002 (which will also apply to the Foreign Powers regime).
- (b) *Practice Statement (Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006).* On 9 May 2025, the Chancellor of the High Court launched a consultation on the Practice Statement for schemes of arrangement under Part 26 and restructuring plans under Part 26A of the Companies Act 2006, which seeks views on a draft Practice Statement to replace the current Practice Statement (Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006). The consultation closes on 13 June 2025, and the replacement Practice Statement is expected to be issued by the end of July 2025.

- (c) *SFO Corporate Guidance*. On 24 April 2025, the Serious Fraud Office announced the publication of new guidance for corporates about self-reporting, co-operation and Deferred Prosecution Agreements.
- (d) *Cyber Governance Code of Practice*. On 8 April 2025, the Department for Science, Innovation and Technology announced the publication of its finalised Cyber Governance Code of Practice. A one page summary has also been published.

5.9 Cases

- (a) *Persons Identified in Schedule 1 v Standard Chartered PLC [2025] EWHC 698 (Ch)*. The High Court has dismissed Standard Chartered PLC's (SC) application to strike out or grant reverse summary judgment on certain claims made under section 90A and paragraphs 3 and 5 of Schedule 10A of FSMA 2000. A number of shareholders had brought an action against SC under section 90A and Schedule 10A of FSMA in respect of alleged untrue or misleading statements in and/or omissions from information published by SC in relation to breaches of Iran sanctions. Barclays had recently faced a similar action in which it successfully brought a strike out application for section 90A claims rooted in: (i) price/market reliance (i.e. on its share price); and (ii) dishonest delay. In *Allianz Funds Multi-Strategy Trust and ors v Barclays plc [2024] EWHC 2710 (Ch)*, reliance could not be satisfied in respect of published information which the claimants did not read or consider at all and dishonest delay only imposed liability where publication of the information had taken place. Following the Barclays judgment, SC sought to strike out, and/or obtain reverse summary judgment in respect of, the similar claims against it. However, in the SC decision the court relied on its inherent discretion to resolve case management issues and rejected SC's claims.
- (b) *In the matter of DS Smith Plc (scheme sanction hearing) [2025] EWHC 696 (Ch)*. This High Court decision highlights the need to seek the permission of the court to introduce expert evidence in relation to reliance on the exemption, from the US registration requirement, under section 3(a)(10) of the US Securities Act of 1933. This exemption is available where terms of issuance are approved, after a fairness hearing, by any court. The process under Part 26 CA 2006 satisfies the requirements for this exemption; the practice is that the bidder will obtain an opinion from US lawyers that section 3(a)(10) applies and that this is then submitted in evidence at the scheme sanction hearing. However, recent decisions of the Court, including in this case, have highlighted that the intention to adduce this type of expert evidence should be addressed in a witness statement at the convening hearing seeking a direction to that effect. This is explained at paragraphs 29 to 33 in the sanction hearing for *DS Smith Plc* – "as a matter of safety first it would be prudent to obtain a direction for expert evidence wherever foreign law or some expert evidence of conventional practice in a foreign jurisdiction is given".
- (c) *Veranova Bidco LP v Johnson Matthey plc [2025] EWHC 707 (Comm)*. The High Court rejected an application by the Sellers to strike out the Buyer's claim for fraudulent misrepresentation based on statements made as specific disclosures in a draft of the Disclosure Letter, notwithstanding that the

Disclosure Letter expressly included wording that "*the disclosure of any matter hereby shall not imply any representation...or any other commitment of any nature whatsoever not expressly given in the [SPA]*". Whilst the judge acknowledged (but did not address) that "*there might also be a difficult legal question hiding away in all of this as to whether [this wording] is sufficient to prevent any disclosure amounting to an actionable representation*", he gave his view that "*there is nothing inherently absurd or implausible about saying that a disclosure letter provides factual information upon which the recipient might rely, just because its primary contractual function will be to qualify the content of the warranties*". That said, he also acknowledged that "*the contractual scheme might well preclude the content of the Disclosure Letter giving rise to claims for misrepresentation*". Whether the Disclosure Letter contained actionable representations required investigation of all of the relevant facts and was therefore a question for trial.

- (d) *Jusan Technologies Ltd v Uconinvest LLC [2025] EWHC 704 (Ch)*. The High Court refused a claim for an order pursuant to section 125(1) CA 2006 to rectify the register of members of the claimant company (**Company**) by deleting the name of the defendant (**Transferee**) on the grounds that the Transferee had failed to deliver a deed of adherence to the Company's shareholders' agreement executed by all of the relevant parties, which the Company's articles of association (**Articles**) mandated its directors to require before registering the transfer of treasury shares by the Company to the Transferee. Whilst the judge agreed that the registration of the Transferee in the Company's register of members in the absence of a validly executed deed of adherence (and therefore in breach of the Articles) was in excess of the powers of the Company's directors, the High Court found that the Transferee had dealt with the Company within the meaning of section 40 CA 2006, which provides that "*in favour of a person dealing with a company in good faith, the power of the directors to bind the company...is deemed to be free of any limitation under the company's constitution*". Accordingly, the Company could not rely as against the Transferee on the excessive exercise of directors' powers, and the claim for rectification of the register failed for that reason.
- (e) *Rukhadze and others v Recovery Partners GP Ltd and another [2025] UKSC 10*. This decision concerned the 'profit rule' for fiduciaries, which is the requirement that, if the fiduciary makes a profit out of their position as a fiduciary, they are bound to account for that profit to their principal, unless the principal has given fully informed consent. The question before the Supreme Court was whether the current test for requiring an account of profits should be altered to introduce a requirement that the fiduciary could not have made the same profit in a way that avoided a breach of duty i.e., "*Could the same profit have been made by the fiduciary but for the breach of fiduciary duty?*". Introducing such a 'but for' causation test would mean departing from two House of Lords authorities: *Regal (Hastings) Ltd v Gulliver [1967] 2 AC 134* and *Boardman v Phipps [1967] 2 AC 46*. The Supreme Court unanimously dismissed the appeal, however, delivered four judgments giving different reasons for reaching that conclusion. The majority held that the obligation to account for profits earned was an essential feature of a fiduciary obligation, that

it was well-established that it did not depend on any counterfactual analysis and that there was no compelling justification for changing the law.

9 July 2025