THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 281st meeting
at 9:00 a.m. on Tuesday, 27 September 2016
at Slaughter and May, One Bunhill Row, EC1Y 8YY
(Tel: 020 7600 1200; Fax: 020 7090 5000)

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1. Welcome and apologies

Attending: William Underhill (Chairman); Emma Wilson (Secretary); Mark Austin; Sam Bagot (alternate for Simon Jay); Mark Bardell; Tom Brassington (alternate for Andrew Pearson); Lucy Fergusson; Chris Horton; Michael Hatchard; Vanessa Knapp; Stephen Mathews; Chris Pearson; David Pudge; Dominic Sedghi (alternate for Robert Boyle); Richard Spedding; Keith Stella; Jeff Sultoon (alternate for Nicholas Holmes); Martin Webster and Victoria Younghusband.

Apologies: Robert Boyle; Nicholas Holmes; Simon Jay; Andrew Pearson and Patrick Speller.

2. Approval of minutes

There were no minutes to approve.

3. Matters arising

3.1 MAR

The Chairman expressed his thanks to Victoria Younghusband and all of those who had worked on the MAR Q&As.

The Chairman remarked that in the absence of action from the FCA, the Q&As had filled a gap in the guidance on MAR. Even though the Q&As were not perfect, they had added real value for clients and were the best that could be done in the time available given the position of the FCA and the lack of guidance from ESMA. It was noted that the Q&As would probably have to be updated as time went on.

3.1.1 Primary Market Bulletin No.15. The Committee noted that on 25 May 2016, the FCA published Primary Market Bulletin No. 15 focusing mainly on how issuers are expected to file notifications relating to transactions by persons discharging managerial responsibilities and notifications for delayed disclosure of inside information under MAR.

3.1.2 FCA position on closed periods under MAR. The Committee noted that on 26 May 2016, the FCA published a statement of its supervisory approach to the question of

whether the 30-day closed period requirement under Article 19(11) of MAR means that issuers that announce preliminary results need to impose closed periods before the announcement of preliminary results, before publication of the year-end report, or both. The statement was updated on 20 July 2016.

3.1.3 Regulations on market soundings. The Committee noted that on 17 June 2016, the Commission published the final delegated regulation supplementing MAR with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings. It also published the regulation laying down implementing technical standards for market soundings.

3.1.4 Guidance on MAR. The Committee noted that on 24 June 2016, ICSA, the GC100 and the QCA jointly published a guidance note on MAR containing a two-part dealing code, a group-wide dealing policy, and a dealing procedures manual.

3.1.5 FCA publishes the Market Abuse Regulation Instrument (No 2) 2016. The Committee noted that on 24 June 2016, the FCA published the Market Abuse Regulation Instrument (No 2) 2016. This instrument amends several modules of the FCA handbook, including the Market Conduct sourcebook and the Listing Rules.

3.1.6 Amendment to MAR in Benchmarks Regulation. The Committee noted that on 29 June 2016, the regulation on indices used as benchmarks in financial instruments and financial contracts was published in the Official Journal.

3.1.7 Regulatory technical standards under MAR. The Committee noted that on 30 June 2016, the Commission published a delegated regulation supplementing MAR with regard to regulatory technical standards for the conditions applicable to buyback programmes and stabilisation measures. It also published implementing technical standards with regard to the technical means for appropriate public disclosure of inside information.

3.1.8 Financial Services and Markets Act 2000 (Market Abuse) Regulations. The Committee noted that on 30 June 2016, the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016/680 were published. The Regulations make a number of amendments to FSMA 2000, and to other primary and secondary legislation, for the purposes of implementing MAR.

3.1.9 Primary Market Bulletin No.16. The Committee noted that on 30 June 2016, the FCA published its Primary Market Bulletin No 16, which includes a consultation on proposed amendments to, and deletions of, its technical notes to reflect changes introduced by MAR. The response of the Listing Rules Joint Working party was published on 18 August 2016 and is available on the Committee's webpage.

3.1.10 Q&As on MAR. The Committee noted that on 5 July 2016, a Q&A was published by the Joint Working Parties for MAR, Takeovers and Share Plans as a suggested approach to implementing certain aspects of MAR. The second Q&A (relating to takeovers) was published on 16 August 2016.

3.1.11 ESMA Q&A on closed periods. The Committee noted that on 13 July 2016, ESMA published an updated version of its Q&A on MAR, which includes a new entry on the 30-day closed period requirement under Article 19(11) of MAR, reflecting the position of the FCA in its statement of supervisory approach on 26 May 2016.

3.1.12 ESMA guidelines on market soundings and delayed disclosure of inside information. The Committee noted that on 13 July 2016, ESMA published final guidelines clarifying the implementation of MAR for persons receiving market soundings and on the delayed disclosure of inside information.

3.1.13 AIM Regulation statement on closed periods and preliminary results. The Committee noted that on 2 August 2016, AIM Regulation published Inside AIM update confirming its position on the question of closed periods and preliminary results, with reference to the question in ESMA's Q&A on MAR. It also published FAQs for AIM companies and their nominated advisers on the disclosure obligations within MAR and the AIM Rules.

3.1.14 Corrigendum to MAR. The Committee noted that on 16 September 2016, the Council of the EU published a corrigendum (dated 14 September 2016) (9993/16) to MAR.

3.2 Directors' remuneration reporting guidance. The Committee noted that on 20 June 2016, the working group was asked to comment on the latest draft of the Directors' Remuneration Reporting Guidance by the GC100 and Investor Group. There were no additional comments from the working group. On 15 August 2016, the GC100 and Investor Group published a revised version of its Directors' Remuneration Reporting Guidance which replaces the previous version published in 2013.

3.3 Amendments to Tech 02/10. The Committee noted that on 23 June 2016, a joint working group from the Committee and the Law Society submitted a response to the ICAEW on the proposed amendments to Tech 02/10. The response is available on the Committee's webpage.

3.4 Availability of information during IPO process. The Committee noted that on 20 July 2016 the Prospectus Joint Working Party responded to the FCA discussion paper on availability of information during the IPO process (DP16/3). The response is available on the Committee's webpage**.** A meeting with Andrew Brooke of AFME and members of the Committee had been arranged for 10.30 a.m. on 27 September 2016.

3.5 PSC Tricky Questions. The Chairman noted that the list of "PSC Tricky Issues" had been circulated with the agenda and would be sent to BEIS once the Chairman had reviewed it. The Chairman asked if the PSC regime was perceived to be causing problems. The Committee's view was that, in general, it was not although there remained some difficult points.

3.6 Guidance on electronic signatures. The Committee noted that on 25 July 2016 the joint working party published guidance on electronic signatures. The Chairman noted that the issue of electronic signatures had been resolved satisfactorily. The Committee noted that generally electronic signatures were not being used in corporate transactions although they were being used in some banking transactions.

3.7 Takeover Code: Response statement on communication and distribution of information. The Committee noted that on 14 July 2016, the Code Committee of the Takeover Panel published its response statement (RS 2016/1) following its consultation (PCP 2016/1) on proposed amendments to the Code in relation to the communication and distribution of information and opinions during an offer by, or on behalf of, an offeror or offeree company.

3.8 LAPFF press release. The Committee noted that the LAPFF (backed by George Bompas QC) is pursuing its debate with the FRC (backed by Martin Moore QC) about the disclosure of distributable profits in company accounts. On 1 September 2016, the LAPFF published a press release announcing that it had send a letter to chairmen of FTSE 350 companies urging them to disregard the FRC's position on the "true and fair view" test because the government did not back the financial regulator. The unanimous view of the Committee was that the FRC's view was correct.

3.9 Consultation on Fourth Anti-Money Laundering Directive. The Committee noted that on 5 September 2016, HM Treasury published a paper on European Commission proposals to amend the Fourth Anti-Money Laundering Directive. The paper discusses the proposal to reduce the beneficial ownership criteria in certain cases from 25 per cent. to 10 per cent. On 15 September 2016, HM Treasury published a consultation paper on the transposition of the Fourth Anti-Money Laundering Directive. The requirements of the directive must come into effect through national law by 26 June 2017.

It was noted by the Chairman that the Commission proposals to amend the Fourth Anti-Money Laundering Directive included reducing the beneficial ownership criteria from 25 per cent. to 10 per cent. It was noted that this only applied to "passive non-financial entities" and so would not affect all companies.

The Chairman noted that a joint working party with the Law Society would be set up to respond to the consultation.

3.10 New Prospectus Regulation. The Committee noted that on 15 September 2016, the European Parliament adopted, with amendments, the Commission's proposal for a new Prospectus Regulation to replace the Prospectus Directive.

4. Discussions

4.1 Brexit. The Committee discussed the implications of Brexit on company law and capital markets. The following issues were raised:

- It would take some time to untangle UK law from EU law even on the assumption that there would be a general saving provision which would incorporate the relevant provisions from EU law into UK law.
- Concepts such as "Home State" would need to be identified and it would need to be clear how they should be interpreted once the UK leaves the EU. References to EU legislation would also need careful thought as although the UK aspects of the legislation could be dealt with by any saving provisions, the

European legislation to which it referred would not be dealt with in this manner. Determining the consequences of these interactions was very challenging.

- Where EU regulations no longer have direct effect, some areas will need further thought. For example, what will happen to SEs incorporated in the UK? Will they continue to be SEs or will they be converted to public companies?

It was noted that the Government would need time to work out its position and strategy and that trying to force it to make decisions before that point could be counterproductive.

The Chairman remarked that the Committee could play a role in the Brexit planning and transition relating to company law and capital markets. The Chairman agreed to speak to the Government to offer the services of the Committee.

It was thought that a sensible approach for the Government would be to concentrate first on the saving provisions and the transitional arrangements to ensure continuity and then, post-Brexit, to consider what the UK might like to change. It was noted, however, that the discussions about what would change post-Brexit would have to commence before the UK left the European Union. The Committee, therefore, should put its position forward before Brexit and before the Government's position potentially becomes entrenched.

It was noted that the Committee could offer to help the Government identify areas where transitional provisions would be required and where the Government should focus its efforts.

4.2 IFRS 16 and borrowing limits. It was noted that IFRS 16 changed the accounting treatment of operating leases and that this was potentially an issue for those companies which had borrowing limits in their articles. It was noted that while at the time of an IPO investors appeared to attach little significance to the absence of borrowing limits, it was thought that the removal of borrowing limits in articles of companies which already had them would not be viewed favourably by investor bodies and that they would probably issue recommendations to vote against those resolutions. Victoria Younghusband offered to contact the investor bodies to check this point.

It was noted, however, that borrowing limits in articles had become very complicated and that they did not necessarily serve a useful purpose. A more useful method of dealing with borrowing issues would be for directors to put the company's appetite for borrowings for the coming year in the viability statement.

It was concluded that companies would have to look at the borrowing limits in the articles and decide whether to change the wording or perhaps to exclude operating leases from the relevant calculation.

4.3 Roundtable with FCA. Victoria Younghusband reported that the FCA had offered to meet the Committee to discuss post-MAR implementation issues and where further clarification was needed. Victoria also reported that the FCA had mentioned that ESMA had a long list of issues which it was considering. It was noted that it would be helpful to speak to the FCA before approaching ESMA with any questions.

Victoria asked the members of the Committee to send her any suggestions for issues to be discussed with the FCA

4.4 Commons inquiry on corporate governance. On 16 September 2016, the Business, Innovation and Skills House of Commons Select Committee launched an inquiry on corporate governance, focusing on executive pay, directors' duties, and the composition of boardrooms, including worker representation and gender balance in executive positions. The terms of reference include questions on each of the three focus areas.

The Chairman noted that the scope of the corporate governance inquiry was very broad and included putting workers' representatives on boards, governance issues and the effectiveness of s.172 CA 2006.

The Chairman reported that he had heard that advisory committees were being considered rather than workers' representatives on board. It was commented that the problem with workers on boards is that they have the same duties as directors and so must vote in the best interests of company. This can lead to workers voting for redundancies, for example.

It was also remarked that the Government was considering mandatory votes on pay on the discretionary elements of bonuses.

It was noted that Germany had worker representation on boards but that the German board structure was very different as it comprised two boards. Norway had unitary boards but it was noted that the worker representation did not always work well there.

4.5 UKLA liaison meeting. The Chairman reported that the UKLA had requested a meeting of the liaison committee. The Chairman requested that any suggestions for topics should be sent to Emma Wilson.

5. Recent developments

5.1 Company Law

The Committee noted that the Registrar of Companies (Fees) (Amendment) Regulations 2016 (SI 2016/621) Regulations were published on 7 June 2016. They make changes to various fees levied by Companies House for filing and obtaining information.

The Committee noted that on 7 June 2016, the Companies and Limited Liability Partnerships (Filing Requirements) Regulations 2016 were published. These contain various company filing changes made by the Small Business, Enterprise and Employment Act 2015 to LLPs and unregistered companies.

The Committee noted that on 5 July 2016, the European Commission published a proposal for a directive to amend the Fourth Money Laundering Directive (2015/849) and the First Company Law Directive. The European Commission adopted these new measures to counter terrorism financing and increase the transparency of financial transactions and corporate entities in response to the leak of the Panama papers. The transparency proposals include reducing the criterion for beneficial ownership from 25%

to 10% with respect to passive non-financial entities (defined in Directive 2014/107/EU), as described in the Government Explanatory Memorandum.

The Committee noted that BEIS has advised that it expects the reporting of payment practices regulation to give effect to section 3 of the SBEE Act to be laid by early 2017, and that it expects the duty will come into force on 6 April 2017, applying to financial years starting on or after that date.

5.2 Corporate Governance

The Committee noted that on 20 May 2016, the Investment Association wrote to the chairs of FTSE companies informing them of its intention to "Amber Top" the re-election of non-executive directors of companies making significant changes to profit expectations and writing down the value of assets following the appointment of new management.

The Committee noted that on 23 May 2016, the FRC published a feedback statement, summarising responses to its October 2015 discussion paper on succession planning in companies to which the UK Corporate Governance Code applies.

The Committee noted that on 17 June 2016, the FRC published the final versions of the: UK Corporate Governance Code, its Guidance on Audit Committees, and the Ethical and Auditing Standards.

The Committee noted that on 21 June 2016, the European Confederation of Directors' Associations, in conjunction with PwC, published new guidance on audit committees focusing on the corporate governance implications of the changes required by Regulation (EU) No 537/2014 on the statutory audit of public-interest entities and Directive 2014/56/EU amending the Statutory Audit Directive.

The Committee noted that on 4 July 2016, the Investment Association published a revised version of its share capital management guidelines.

The Committee noted that on 13 July 2016, the QCA published its revised Remuneration Committee Guide for Small and Mid-size Quoted Companies.

The Committee noted on 26 July 2016, the Executive Remuneration Working Group published its final report recommending the need for increased flexibility for companies to choose the remuneration structure that is most appropriate for their business.

The Committee noted that following a consultation which was closed on 24 June 2016, on 19 September 2016, ICSA published a press release stating that it had issued new guidance about minute taking.

5.3 Reporting and Disclosure

The Committee noted that on 25 May 2016, the FRC published its FAQs and press release on ESMA's Guidelines on alternative performance measures, which came into force on 3 July 2016.

The Committee noted that on 7 June 2016, IOSCO published a report setting out its final statement on the disclosure of non-GAAP financial measures.

The Committee noted that on 30 June 2016, the FRC published an update to its June 2015 discussion paper on improving reporting by smaller listed and AIM quoted companies.

The Committee noted that on 14 July 2016, the Companies (Disclosure of Information) (Specified Persons) Regulations 2016 and explanatory memorandum were published, pursuant to the power of the Secretary of State under section 449(3) of the Companies Act 1985 to amend Schedule 15C to that Act.

The Committee noted that the Government Equalities Office (GEO) has confirmed that the publication of the final Equality Act 2010 (Gender Pay Gap Information) Regulations 2016 has been delayed. The GEO now envisages that the regulations will be laid before Parliament in the autumn, and will commence in April 2017.

5.4 Equity Capital Markets

The Committee noted that on 24 May 2016, the Commission published a delegated regulation under MiFID II with regard to technical standards for the admission of financial instruments to trading on regulated markets.

The Committee noted that on 5 July 2016, the Association for Financial Markets in Europe published guidance on research meetings and material prior to the award of a capital markets mandate.

The Committee noted that on 1 July 2016, ICAP Securities & Derivatives Exchange published final revised ISDX Growth Market Rules for Issuers, following its consultation in June 2016.

The Committee noted that on 15 July 2016, ESMA published version 25 of its Questions and Answers: Prospectuses.

The Committee noted that on 29 July 2016, the FCA published Handbook Notice No 35 setting out its response to feedback received on its twelfth quarterly consultation. It also published the final instrument 2016/55 which is in the same form as the draft included in the consultation paper.

The Committee noted that on 31 August 2016, the delegated regulation setting out technical standards of the Transparency Directive regarding a European electronic

access point to regulated information about all listed companies in the EU was published in the Official Journal.

5.5 UKLA

The Committee noted that on 16 June 2016, the FCA published the Disclosure Rules and Transparency Rules Sourcebook (Statutory Audit Amending Directive) Instrument 2016/40, which amends the DTRs in relation to audit committees, to reflect the requirements of Directive 2014/56/EU amending the Statutory Audit Directive.

The Committee noted that on 4 July 2016, the FCA published its thirteenth quarterly consultation paper, CP16/17.

The Committee noted that the UKLA revised guidance on submission of draft prospectuses. The UKLA has recently amended the guidance on its website regarding the submission of draft prospectuses for its review.

5.6 Accounting

The Committee noted that on 20 June 2016, the Statutory Auditors and Third Country Auditors Regulations 2016 and explanatory memorandum were published. The regulations are in substantially the same form as the revised draft regulations published on 24 May.

The Committee noted that on 8 July 2016 the FRC published its amendments to FRS 101 (Reduced Disclosure Framework) following its annual review, with minor and technical amendments since the draft amendments published for consultation in December. The FRC is also consulting on a further amendment to FRS 101, to remove the requirement for a qualifying entity to notify its shareholders in writing that it intends to take advantage of the disclosure exemptions in FRS 101. A similar, consequential, amendment is also proposed to FRS 102 (The Financial Reporting Standard applicable in the UK and Republic of Ireland).

The Committee noted on that 31 August 2016, the FRC announced the outcome of the disciplinary case relating to PwC and its audits of Cattles plc and Welcome Financial Services Limited for the year ended 31 December 2007.

5.7 Europe

The Committee noted that on 30 June 2016, the Directive amending the MiFID II Directive and the Regulation amending MiFIR, the Market Abuse Regulation and the CSD Regulation were published. Among other things, the Regulations postpone the implementation date of the MiFID II legislative package by one year to 3 January 2018..

The Committee noted that on 21 June 2016, the Council of the European Union announced it has agreed on the draft Anti-Tax Avoidance Directive, addressing tax avoidance practices commonly used by large companies. The directive is part of the

Anti-Tax Avoidance Package adopted by the European Commission on 28 January 2016.

5.8 LSE

The Committee noted that on 22 June 2016, the London Stock Exchange published Market Notice N04/16 which sets out new revised Admission and Disclosure Standards. Amendments have been made to Schedule 6 (Admission to trading only).

5.9 Public M&A

The Committee noted that on 14 July 2016, the Takeover Panel and the Code Committee of the Panel published new Terms of Reference for the Hearings Committee and for the Code Committee, new Procedures for Amending the Takeover Code, new Rules of Procedure of the Hearings Committee, and amendments to the Introduction to the Code (Instrument 2016/3 and Instrument 2016/4).

5.10 Cases

The Committee noted the following cases:

(A) *Teoco UK Ltd v Aircom Jersey 4 Ltd (unreported)*. The High Court has considered whether a buyer's warranty claims under a share purchase agreement were barred by contractual limitation of liability that required the buyers to give the sellers written notice of a claim setting out reasonable details of the claim as soon as reasonably practicable after it became aware of the claim. The court held that two letters sent by the seller did not constitute due notification under the agreement, as they failed to comply with the requirements of notice of claim provisions, including requirements about the content and form of the notice.

(B) *Starbev GP Ltd v Interbrew Central European Holdings BV [2016] EWCA Civ 449*. The Court of Appeal has confirmed a High Court ruling on a dispute as to the meaning of the term "the purpose" in an agreement for the sale and purchase of a business. The seller argued that a certain post-completion transaction by the buyer was, under the terms of the sale agreement, "structured or undertaken … with the purpose of reducing the payments due to [the Seller]" and that as a result money was due to the seller. The issue turned on whether "the purpose" meant (1) "the sole purpose", (2) "the specified purpose, even if only one of many", or (3) "the dominant purpose". The Court of Appeal agreed that the High Court was entitled to rely in a commercial context on the principle in Hayes v Willoughby [2013] UKSC 17.

(C) *Lungowe and others v Vedanta Resources plc and another [2016] EWHC 975 (TCC)*. This case considers the circumstances in which a parent company may be liable for the actions of a subsidiary in tort. This was a hearing of various preliminary issues relating to claims of personal injury, damage to property, loss of income and loss of amenity and enjoyment of land, arising out of alleged

pollution and environmental damage caused by the Nchanga copper mine in Zambia.

(D) *Alexander v West Bromwich Mortgage Company Ltd [2016] EWCA Civ 498*. The Court of Appeal has overturned a High Court ruling in relation to the interpretation of conflicting clauses in a contract. A mortgage contract incorporated terms from a mortgage offer letter (which set out the specific details of the mortgage) and the lender's standard conditions. The offer letter stated that in the event of an inconsistency, the offer letter would prevail. The Court of Appeal held that the correct approach when faced with an inconsistency clause is to approach the inconsistency without any pre-conceived assumptions, so one should not strive to avoid or to find inconsistency. Applying this, it found that the offer letter and the conditions were inconsistent and could not sensibly be read together.

(E) *Sherlock Holmes International Society Ltd v Aidiniantz [2016] EWHC 1076 (Ch)*. The court considered when articles of association may be amended by conduct in the context of directors being appointed despite not being members of the company, where the company's articles provided that only members were eligible to hold office. Where conduct alone is relied on, the conduct must lead to the conclusion that on the balance of probabilities the members intended to amend the articles and, further, intended to make the particular amendment contended for.

(F) *BTI 2014 LLC v Sequana S.A. & Ors [2016] EWHC 1686 (Ch)*. The Committee discussed this case which considers a number of issues relating to the process for implementing a reduction of capital supported by a solvency statement and the circumstances in which the directors of a company are required to consider the interests of creditors. It was noted that the Sequana case contained helpful guidance in relation to reductions of capital by means of solvency statements. It was also noted that generally the decision was felt to be helpful to directors.

It was noted that the decision that a dividend can be a transaction to defraud creditors was surprising.

(G) *Patel v Mirza [2016] UKSC 42, [2016] All ER (D) 91*. The Supreme Court considered the circumstances in which illegality should be a defence to a civil claim, in particular whether a claimant who had transferred money pursuant to an illegal contract could recover the sums paid, when the contract was not performed. The Supreme Court held that a claim will not be enforced if it would be harmful to the integrity of the legal system.

(H) *MSC Mediterranean Shipping Company SA v Cottonex Anstalt [2016] EWCA Civ 789*. The Court of Appeal has held that an innocent party faced with a repudiatory breach did not have an option to affirm the contract because the defaulting party could not perform its contractual obligations. At first instance, the High Court found that the innocent party to the repudiatory breach could not affirm the contract because it had no "legitimate interest" in doing so; its only

reason for affirming was to continue to claim liquidated damages, which far outweighed the actual losses suffered. While agreeing that it would be unreasonable to affirm merely to claim the liquidated damages, the Court of Appeal held that, on the facts, the innocent party did not even have the option to affirm the contract in the first place because it was impossible for the defaulting party to perform its obligations.

(I) *Idemitsu Kosan Co Ltd v Sumitomo Co Corp [2016] EWHC 1909 (Comm)*. On 6 July 2016, the High Court considered whether matters warranted by the seller to the buyer in a share purchase agreement were also representations capable of founding an action for misrepresentation under the Misrepresentation Act 1967. The court granted summary judgment dismissing the buyer's misrepresentation claim. It held that where a contractual provision states only that a party is giving a warranty, that party does not, by concluding the contract, make any statement to the counterparty that is actionable as a misrepresentation.

(J) *Wey Education plc v Atkins [2016] EWHC 1663 (Ch)*. In this case the court considered a number of alleged breaches by the defendant director of the duty of loyalty and the duty to promote the success of the claimant companies (under s.172 Companies Act 2006).

(K) *Re SABMiller plc [2016] EWHC 2153 (Ch)*. SABMiller plc sought an order under section 896 of the Companies Act 2006 summoning a single meeting of all of its ordinary shareholders other than its two largest shareholders for the purpose of considering a scheme of arrangement. At the convening hearing a shareholder argued that the court did not have jurisdiction to convene a meeting of the public shareholders from which the largest shareholders were excluded. The court held that it did have jurisdiction on the basis that the relevant provisions of the Companies Act 2006 should be interpreted flexibly and purposively so as to coincide with the legislative intention to promote compromises and arrangements.

5.11 Insolvency

The Committee noted that on 25 May 2016, The Insolvency Service launched a review of the corporate insolvency framework, consulting on options for reform.

5.12 Miscellaneous

The Committee noted that on 17 August 2016, HMRC published Proposals for sanctions for those who design, market or facilitate the use of tax avoidance arrangements which are defeated by HMRC and to change the way the existing penalty regime works for those whose tax returns are found to be inaccurate as a result of using such arrangements.

6. Any other business

It was noted that in the announcement of half-yearly results, most FTSE 250 companies have not said that the results contain inside information. It was reported that some brokers have advised that this is not necessary if the results are in line with expectations and because it is a shorter snapshot than the full year results.

It was noted that some brokers are saying that it is a feature of an orderly market that the price moves on announcement of results. There was a discussion about whether knowing that information is in line with expectations is inside information.

It was noted that the Hannam decision (Ian Hannam v FCA [2014] UKUT 0233 (TCC)) assumed that results information was inside information but that a listed company may reasonably delay announcing until the reporting date.