THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 288th meeting
at 9:00 a.m. on 29 November 2017
at Clifford Chance LLP, 4 Coleman Street, London EC2R 5JJ

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1. **Welcome and apologies**

Attending: David Pudge, Mark Austin, Mark Bardell, Adam Bogdanor, Robert Boyle, Lucy Fergusson, Kevin Hart, Nicholas Holmes, Chris Horton, Simon Jay, John Adebiyi, Vanessa Knapp, Stephen Mathews, Murray Cox, Chris Pearson, Richard Spedding, Patrick Speller, Richard Ufland, Martin Webster, Victoria Younghusband and Kath Roberts.

Apologies: None

The Chairman welcomed Richard Ufland as a new member of the Committee and reported that Richard was in place of Andrew Pearson from Hogan Lovells who was retiring from the Committee. The Chairman asked that the minutes reflect the Committee's thanks for Andrew's contribution to the Committee during his tenure.

2. **Approval of minutes**

It was noted that the minutes of the 27 September 2017 meeting had been circulated to members of the Committee on 23 October 2017 and that no comments had been received. The minutes have subsequently been published on the CLLS website.

3. **Matters arising**

3.1 Response to Takeover Panel consultation PCP 2017/2: Statements of intention and related matters. It was noted that a response had been prepared by the Takeovers Joint Working Group and submitted to the Panel on 31 October 2017.

3.2 Response to FCA Primary Market Bulletin No. 18. It was noted that a response had been prepared by the Joint Listing and Prospectus Rules Working Group and submitted to the FCA on 11 October 2017.

3.3 Response to FCA consultation paper CP 17/21 (proposal for a new listing segment for sovereign controlled companies). It was noted that a response had been prepared by the Joint Listing and Prospectus Rules Working Group and submitted to the FCA on 13 October 2017.

3.4 Draft regulations (The Business Contract Terms (Assignment of Receivables) Regulations 2017) prohibiting restrictions on assignment. It was noted that BEIS had withdrawn the draft regulations and that a meeting was being arranged for

7 December 2017 between BEIS and a working group drawn from various CLLS Committees to discuss how best to address the concerns raised in relation to the regulations and to seek to agree new drafting. The Chairman would be attending this meeting on behalf of the Committee. The Committee noted that the key issues from it from a corporate perspective were to have both asset purchase agreements and share sale and purchase agreements and any associated transitional services agreements treated as being outside the scope of the regulations given the distinct nature of those agreements did not appear to be within the policy aim of the regulations.

3.5 HMRC guidance for companies wishing to self-report failure to prevent facilitation of UK tax evasion. It was noted that HMRC had published guidance on 29 September 2017 for companies/partnerships to report on their own behaviour, or "self-report" when they have failed to prevent the facilitation of UK tax evasion.

3.6 BEIS updates guidance webpage and its guidance to reporting on payment practices and performance. It was noted that on 11 October 2017, BEIS had updated its guidance webpage and guidance on reporting on payment practices and performance. The Committee noted that the guidance contains information on the treatment of disbursements by law firms under the regulations.

3.7 FRC feedback statement on auditors and preliminary announcements. It was noted that on 24 October 2017, the FRC had published a feedback statement following its consultation on the role of the auditor in preliminary announcements (launched on 27 April 2017).

3.8 Updated MAR Q&A: It was noted that on 30 October 2017, the Joint CLLS/Law Society CLC MAR Working Group had republished its MAR Q&A with an updated Q7. This update had been made in light of the updated Q&A 7.7 in ESMA's Q&A on MAR published on 6 July 2017 as ESMA's views in Q&A 7.7 were incompatible with the original version of Q7 of the MAR Working Group's MAR Q&A.

It was noted that the previously held view was that that where a person was a director of both company A and company B, in circumstances where company B dealt in the shares of company A, company B would not be treated as a PCA of the director (which would require company B to notify company A and the FCA of its dealing) so long as he or she was not the sole director of company B or otherwise controlled B's management decisions. However, the Committee noted that as a result of the ESMA Q&A published in July 2017, the position had been altered. Company B would be treated as a PCA of a director, simply by virtue of the individual being a PDMR of company B. As such, were company B to deal in company A's financial instruments, company B would need to notify company A and the FCA of any such dealing. The Working Group's updated MAR Q&A clarified this change in practice and offered some practical advice to market participants to assist directors with multiple directorships avoid this situation arising. In particular, where a director of company B recuses him/herself from any decision-making process relating to a proposal to deal in company A's financial instruments and the director does not otherwise influence company B's decision to deal in the financial instruments of company A, then company B should not be treated as a PCA of that director.

3.9 New FCA rules to reform the availability of the information in the UK equity IPO process. It was noted that on 26 October 2017, the FCA published policy statement,

PS 17/23, containing the text of new COBS rules and guidance intended to improve the range, quality and timeliness of information made available to market participants during the UK equity IPO process and that the new rules and guidance take effect on 1 July 2018.

3.10 FCA policy statement, PS 17/22, entitled "Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime". It was noted that FCA policy statement PS17/22 was published in response to the FCA's February 2017 consultation (CP 17/4) and that the FCA is pressing ahead with the changes proposed in CP 17/4 by means of the introduction of new technical notes and Listing Rule changes which take effect on 1 January 2018.

3.11 FCA feedback statement, FS 17/3, to DP 17/2 Review of the Effectiveness of Primary Markets: the UK Primary Markets Landscape. It was noted that in this feedback statement the FCA identified three areas that it believes merit further consideration and in relation to which it will continue to engage with stakeholders: (i) the positioning of the standard versus premium listing; (ii) the provision of patient/scale-up capital to companies requiring long term investment (in particular in the context of supporting the growth of science and technology companies); and (iii) retail access to debt markets. The Committee agreed to keep a watching brief on those issues and noted that it may be appropriate for the Joint Listing and Prospectus Rules Working Group to respond to any future proposals published by the FCA.

3.12 Joint Committee Working Group draft notes on guarantees and intra-group loans in light of the positions reflected in TECH 02/17. It was noted that these notes were first circulated to the Committee on 7 November 2017 and discussed on a call on 13 November 2017. It was further noted that the issues raised in those notes had been discussed at the From Counsel panel session on 27 November 2017. The Joint Committee Working Group intended to review the notes before discussing them with Martin Moore QC and the ICAEW.

3.13 LSE published a Market Notice confirming amendments to the Rules of the LSE in preparation for MiFID II. It was noted that on 1 November 2017, the LSE published Market Notice N09/17 which confirms amendments to the Rules of the LSE in preparation for MiFID II and following a general rule book review and that the new Rules will become effective on 3 January 2018.

4. Discussions

4.1 ESMA's Q&A on the Market Abuse Regulation (MAR) (Q&A6.1). The Chairman reminded the Committee of the concerns raised at the September Committee meeting regarding Q&A6.1 of the ESMA MAR Q&A and the risk that standard hedging of share awards or currency and other day to day corporate treasury actions undertaken by non-regulated corporate issuers may be caught, triggering obligations under Article 16(2) MAR (which sets out surveillance and reporting obligations in relation to the prevention and detection of market abuse). At the September Committee meeting Victoria Younghusband had agreed to discuss this issue further with the FCA.

Victoria reported back to the meeting that she had spoken to the FCA about this concern and had been told that the FCA policy team will be working closely with

Supervision on this. There was, however, no clarity over whether and, if so, when they would publish guidance on this point.

The FCA is also stepping up its engagement with firms to ensure a consistent message.

It was agreed that this is an area that would be worth drawing to the attention of corporate treasurers. Murray Cox agreed to contact the Association of Corporate Treasurers in this regard.

Separately, the Chair reported that he had been in touch with Jim Moran at the FCA to discuss plans to expand the Committee's engagement with the FCA beyond MAR issues. A meeting is expected to be scheduled between the Committee and the FCA in the early 2018 and Committee members were encouraged to send any issues for discussion at this meeting in relation to the Listing Rules or the Prospectus Rules to either the Chairman or Kath Roberts.

Electronic AGMs: Whether s.311(b) CA 2006 requires a physical location to be stated as the "place of the meeting". Notwithstanding that the Committee had debated this issue at its September 2017 meeting, the Committee discussed this issue again in light of the From Counsel panel session held on 27 November 2017 where it was debated. The meeting also noted the recently published views of the Investment Association and the Institutional Shareholder Service, neither of which will support proposals which allow for the holding of a wholly virtual AGM. The meeting noted, however, that hybrid meetings (with both a physical and virtual place of meeting) were permissible. With regard to the uncertainties surrounding s.311(b), it was noted that this might be an area to raise with BEIS in the future as the issue could be resolved if the Companies Act 2006 were to be amended to clarify that wholly virtual meetings were permissible. It was recognised that individual firms would need to take a view on the issues when advising clients, although the Committee noted that, given the position taken by both the IA and the ISS, companies were, in any event, unlikely to seek to convene wholly virtual AGMs.

4.2 Prospectus Regulation conversion exemption. Mark Bardell referred the Committee to the paper circulated in advance of meeting which highlighted practical difficulties that had arisen in relation to listed investment funds as a result of the changes to the Prospectus Regulation which had introduced a cap of 20% on the exemption from having to publish a prospectus when new shares of a listed share class arise on the conversion of any listed or unlisted securities. The note also set out proposed alternative approaches for addressing these difficulties.

The Committee's agreement was sought for the note to be submitted to the FCA on behalf of the Committee. The Chairman and the Committee were supportive of this. Members were asked to share the note with colleagues who advise listed investment funds and for any comments on the note to be passed to Mark, following which it would be submitted to the FCA on behalf of the Committee.

4.3 New FCA rules to reform the availability of the information in the UK equity IPO process. The Committee discussed the new rules and thought it likely that market practice would develop such that, rather than unconnected analysts being granted access to management at the same time as the connected analysts, the timetable would

be structured to allow for a seven day gap between the publication of the approved registration document and publication of any analyst research, in order to give unconnected analysts time to prepare their own research.

It was reported that AFME were to progress the preparation of industry guidelines, intended to set out how unconnected analysts could participate in the preparation of research on IPOs.

4.4 BEIS consultation on national security and infrastructure investment review. The Committee noted that on 17 October 2017, BEIS published a Green Paper setting out proposals to reform how the government scrutinises investments for national security purposes and that the Green Paper includes: (i) short term proposals that will enable the government to intervene in mergers that raise national security concerns by amending the turnover threshold and share of supply tests within the Enterprise Act 2002 for companies that design or manufacture military and dual use products, and companies in parts of the advanced technology sector; and (ii) long term proposals that will allow for better scrutiny of transactions that may raise national security concerns. It was noted that the consultation closed on 14 November 2017 for the short term proposals and that the CLLS Competition Working Group had submitted a response. The consultation in relation to the long term proposals closes on 8 January 2018.

4.5 Brexit: (i) European Commission Notice to Stakeholders: withdrawal of the United Kingdom and EU rules on company law published on 21 November 2017 and (ii) update on Brexit discussions with CLLS Sub Committee Chairs.

The Committee considered the European Commission Notice to Stakeholders. . It was noted that this set out the position as a matter of EU law, but did not consider what the position would be as a matter of English law once Brexit had happened.

Vanessa Knapp highlighted that there is a potential risk for companies incorporated in the UK which have their central administration in another EU member state which adopts the "real seat" approach to company law (rather than the "incorporation approach"). In such member states such as Germany, for example, it is likely that, in the absence of a change in local law, the shareholders of such companies could be found liable for the debts of the company (i.e. they would lose recognition of their limited liability status in Germany). Companies affected by this will need to consider what action to take prior to Brexit. The meeting discussed the issue of freedom of establishment laid down in the Treaty on the Functioning of the European Union (**TFEU**) and the means by which a company may seek to move its registered office from one member state to another given there is no process set out under EU law to do this, whilst noting, however, that a member state could be found to be in breach of Treaty law if it failed to allow it.

Reference was made to the recent case of **Polbud**, which came before the ECJ in October 2017, regarding freedom of establishment (Case C-106/16). In that case, the ECJ had been asked to give a preliminary ruling in the context of an action brought by Polbud, a Polish incorporated company, against a decision to refuse its request that it

be removed from the Polish commercial register following the transfer of its registered office to Luxembourg.[1]

After discussion, it was noted that it would be helpful if Companies House had a clear policy on their approach were a UK incorporated company to seek to move its registered office to another member state, or were a company incorporated elsewhere in the EU to seek to move its registered office to the UK.

Vanessa also reported that the Law Society had been discussing with BEIS whether the UK should retain a cross-border merger regime post-Brexit, in light of the fact that the current cross-border merger regime, which is derived from EU law and requires reciprocity between member states, is unlikely to continue in its current form post-Brexit. It was noted that Luxembourg and Jersey already have regimes which allow for cross-border mergers of domestic companies with countries incorporated in third countries such that there were regimes that the UK could seek to replicate in this regard should it wish to do so.

Separately, the Chairman suggested that it would be helpful to ask BEIS to come and speak to the Committee about its general policy approach in relation to Brexit and to discuss with BEIS how the challenge of reviewing the reams of secondary legislation still be to published in order to maintain the existing status quo of UK law post-Brexit could be best managed. The Chairman is to contact Andrew Death at BEIS (who recently spoke to the Law Society Company Law Committee) to invite him to the January meeting.

It was also noted that BEIS are currently consulting on whether the UK should adopt IFRS or its own version (UK IFRS), post-Brexit. Members interested in attending a meeting with BEIS on this issue were asked to contact Lucy Fergusson.

Kevin Hart reported back on the meeting of the CLLS Sub Committee Chairs. Kevin reminded the Committee that the CLLS had established two specific committees to assist with Brexit related issues, namely:

- the Brexit Law Committee, chaired by Robert Elliott, which is focused on cross-border issues; and

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[1] The Polish commercial registry refused to remove Polbud from its register on the basis that Polbud could not produce to it documentation relating to its liquidation. Polbud argued that there was no need to produce such documentation on the basis that it was not being wound up, but was moving its registered office to Luxembourg, where it would continue its existence as a company incorporated under Luxembourg law. The ECJ was asked to give a preliminary ruling on the application of Article 49 and 54 of the TFEU. In this case the ECJ held that, by requiring the liquidation of the company in question, the national legislation in issue is liable to impede, if not prevent, the cross border conversion of a company and therefore constitutes a restriction on freedom of establishment. Such a restriction is only permissible if it is justified by overriding reasons in the public interest and is appropriate for ensuring the attainment of the objective in question and does not go beyond what is necessary to attain that objective. In this instance, the ECJ found that Polish legislation requiring mandatory liquidation of a company wishing to transfer its registered office to another member state goes beyond what is necessary to protect the interests of creditors, minority shareholders and employees of the company transferred. Link to case:

http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d6f3cf77c9f21d4d3b88f9936a3b956510.e34KaxiLc3qMb40Rch0SaxyMchb0?text=&docid=195941&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=924555

- the Mutual Market Access Group, chaired by Edward Braham, which is focused on issues of concern to BEIS.

It was also noted that the Commercial Law Committee is intending to set up a specialist GDPR committee and intends to advertise for members in the new year.

5. Recent developments

5.1 Company Law

It was noted there were no items in relation to Company Law to be considered.

5.2 Corporate Governance

The Committee noted that the publication by the FRC of its consultation on the UK Corporate Governance Code was imminent and that the changes are expected to apply to financial years starting on or after 1 January 2019. It was also noted that the GC100 is intending to refresh its guidance on s.172 CA 2006 duties in Spring 2018, and that the guidance is intended to offer practical examples and assistance to companies in interpreting the new legislative requirement for large companies to explain how their directors comply with the requirements of s.172 CA 2006. This legislation is expected to be published by Government by not later than March 2018. The Chairman reported that he had met with Ben Matthews, the Company Secretary at HSBC, who is leading the GC100 working group which is preparing the s.172 guidance and had offered the Committee's support with this work if that would be helpful. Ben had appreciated the offer and agreed to keep the Chairman informed of the working group's progress.

The Committee noted that on 16 November 2017, ISS published updates to its 2018 Proxy Voting Guidelines, which include a new policy on virtual meetings.

The Committee noted that on 26 September 2017, ICSA and the IA published guidance entitled The Stakeholder Voice in Board Decision Making and that the Committee meeting held on 27 September 2017 had already considered this report.

The Committee noted that on 12 October 2017, the Parker Review Committee had published its final report into the ethnic diversity of UK boards, following its consultation on the report launched in November 2016.

The Committee noted that on 9 October 2017, the Institute of Directors published The 2017 Good Governance Report, whereby stakeholders can assess the overall standard of corporate governance at the largest UK listed companies by reference to the IoD's Good Governance Index.

The Committee noted that on 11 October 2017, the Best Practice Principles Group for Shareholder Voting Research issued a press release announcing the launch of a consultation on its Best Practice Principles for Shareholder Voting Research and Analysis and that the consultation closed on 15 December 2017.

The Committee noted that in the response to the Green Paper on corporate governance, the Government had invited the IA to maintain a public register of listed companies encountering shareholder opposition of 20% or more to executive pay and other

resolutions. The Committee also noted that on 26 October 2017, the IA announced that it was writing to all companies in the FTSE All-Share which received votes of 20% or more against any resolution or withdrew a resolution in 2017 and giving these companies the opportunity to provide a public explanation on how they have addressed their shareholders' concerns following the shareholder vote before the public register goes live at the end of 2017.

The Committee noted that on 3 November 2017, the IA wrote to the chairmen of remuneration committees of FTSE 350 companies to outline the key changes to The Investment Association Principles of Remuneration for 2018, and to highlight the items of focus for the 2018 AGM season.

The Committee noted that on 9 November 2017, the Hampton-Alexander Review published a supplemental report on improving the gender balance in the leadership of FTSE companies.

The Committee noted that, on 13 November 2017, the European Commission published a consultation on the duties of institutional investors and asset managers regarding sustainability.

The Committee noted that, on 14 November 2017, the Department for Digital, Culture, Media and Sport and HM Treasury published a report from an independent advisory group on developing a culture of social impact investing in the UK.

The Committee noted that Practical Law Corporate had published a report on the key trends from the 2017 reporting and AGM season.

5.3 **Reporting and Disclosure**

The Committee noted that on 4 October 2017, the FRC's Financial Reporting Lab published an implementation study on how companies have responded to investor calls for better disclosure of dividends in the second year of reporting since it published its November 2015 report entitled "Disclosure of dividends – policy and practice".

The Committee noted that on 12 October 2017, BEIS published a consultation paper seeking views on its proposals for a streamlined and more effective energy and carbon reporting framework. It was noted that as the CRC Energy Efficiency Scheme is to be abolished at the end of the 2018-19 compliance year, the new framework would be implemented in April 2019.

The Committee noted that on 10 October 2017, the FRC published its advice to audit committee chairs and finance directors of companies for preparing 2017/18 annual reports.

The Committee noted that on 23 October 2017, the FRC issued a press release announcing that it has published its Annual Review of Corporate Reporting 2016/2017 which sets out the FRC's assessment of corporate reporting in the UK and that the FRC had also published its Corporate Reporting Review: Technical findings 2016/17.

5.4 **Equity Capital Markets**

The Committee noted that on 17 October 2017, the FCA issued a press release announcing that it has fined Rio Tinto plc £27,385,400 for breaching the DTRs by failing to carry out an impairment test and to recognise an impairment loss on the value of mining assets when publishing its 2012 interim results on 8 August 2012.

The Committee noted that on 5 October 2017, the LSE announced, in an AIM Disciplinary Notice, the public censure and £85,000 fine of Management Resource Solutions plc for breaching Rules 10, 22 and 31 of the AIM Rules for Companies.

The Committee noted that on 13 October 2017, the LSE published two notices in relation to Legal Entity Identifier (LEI) requirements: (i) Market Notice N07/17 on LEI requirement for all issuers; and (ii) AIM Notice 47 on LEI requirement for AIM companies.

The Committee noted that on 19 October 2017, the FCA published the text of Listing Rules Sourcebook and Fees Manual (Redesignation and Miscellaneous Amendments) Instrument 2017 (FCA 2017/62) which takes effect on 1 January 2018.

The Committee noted that on 20 October 2017, ESMA published an update to its Q&A on prospectus related issues (27th updated version).

The Committee noted that on 30 October 2017, ESMA published six new questions in its Q&A on its guidelines on alternative performance measures for listed issuers.

5.5 **MAR**

The Committee noted that on 29 September 2017 and again on 21 November 2017, ESMA published updated versions of its Q&A on the MAR. It was noted that the new Q&A were consistent with the views of the Committee on the relevant issues and, where applicable, with the views expressed in the CLLS and Law Society Company Law Committees' Joint Working Group on Market Abuse MAR Q&A.

The Committee noted the recent imposition by the FCA of a fine where, following an investigation, the FCA had found that Mr Walter, an experienced trader, engaged in market abuse by creating a false and misleading impression as to supply and demand in the market for Dutch State Loans on 12 occasions in July and August 2014. While the FCA did not find that Mr Walter knew his conduct amounted to market abuse, the FCA had considered that he was negligent in not realising this and that his behaviour had manipulated market prices resulting in other market participants being adversely affected.

5.6 **Takeovers**

The Committee noted that the Share Plan Lawyers Group Takeover Code: Points of Practice contains a table which summarises points of market practice for practitioners to be aware of and reflects discussions which the Share Plan Lawyers Group had with the Panel in August 2017.

The Committee noted two recent takeovers undertaken by way of scheme of arrangement where the Court was asked to consider issues relating to class composition (no judgments available): Jimmy Choo and Imagination Technologies

The Committee noted that on 29 September 2017, the Takeover Panel published Panel Statement 2017/19 with details of three new checklists that have been published by the Panel Executive and which are available on the Takeover Panel website for use with immediate effect.

5.7 **Miscellaneous**

The Committee noted that on 4 October 2017, the Home Office published an updated version of its statutory guidance for commercial organisations on the human trafficking and slavery statement they are required to make each year under s.54 Modern Slavery Act 2015 (guidance entitled: "Transparency in Supply Chains etc.: A practical guide").

The Committee noted that on 16 November 2017, the Finance (No.2) Act 2017 received Royal Assent and that clause 65 and Schedule 16 introduce a new penalty for any person who enables the use of abusive tax avoidance arrangements, which are later defeated. The Committee also noted that HMRC has published draft guidance on penalties for enablers of defeated tax avoidance.

5.8 **Cases**

The Committee noted the following cases:

(a) *VB Football Assets v (1) Blackpool Football Club (Properties) Limited (2) Owen Oyston (3) Karl Oyston (4) Blackpool Football Club Limited [2017] EWHC 2767 (Ch)*. In an unfair prejudice case brought by VB Football Assets, the High Court considered whether the affairs of Blackpool FC had been conducted by the respondents to the unfair prejudice of the interests of VB Football Assets (a 20% shareholder). The acts complained of were that: (i) substantial payments were made out of Blackpool FC which were improper and there was failure by Blackpool FC to pay dividends; (ii) VB Football Assets was excluded from the management of Blackpool FC and decisions which should have been made by the board, were made outside board meetings; and (iii) the adoption of new articles of association by Blackpool FC was unfairly prejudicial. The High Court held that the conduct referred to in (i) and (ii) was unfairly prejudicial to the interests of VB Football Assets (however, not the conduct referred to in (iii)). In relation to (i), a number of payments that were made to Oyston controlled group companies were held to be disguised dividends. In relation to these the High Court held that: (a) the true nature of one loan was a disguised distribution as the payment was not for the benefit of Blackpool FC; (b) another loan should be re-classified as a disguised dividend due to the terms of the loan being sufficiently uncommercial; (c) two payments were disguised distributions where Blackpool FC was under no obligation to make the payments and from which it derived no benefit; and (d) a further payment was essentially gratuitous (rather than a payment for past services) and in essence a disguised dividend. The High Court also held that a failure to pay dividends can only be regarded

as unfair prejudice if there is some inconsistency in the way the company behaves as regards different members. Therefore, if a dividend, or something being in substance a dividend even if dressed up as something different, is paid to one member and not another then that is an indicator of unfair prejudice.

(b) *In the matter of (1) GET Business Services Limited and (2) ICT Business Services GmbH [2017] EWHC 2677 (Ch)*. On a cross-border merger by absorption of a company by its sister company, the High Court held that the date from which the holding of shares in the transferee company will entitle the holders to participate in profits (as required by regulation 7(2)(e) of the Companies (Cross-Border Mergers) Regulations 2007) is a matter for agreement between the merging parties. Regulation 7(2)(e) does not contain any implied restriction on the date that can be specified and does not exclude the possibility of a date being specified that precedes the effective date of the merger. This point was considered because Mr Justice Nugee in *Re iTouch Ltd* [2016] EWHC 3448 (Ch) had expressed concern that regulation 7(2)(e) might not be complied with if the date given in the merger plan for the purposes of regulation 7(2)(e) was a date that preceded the effective date of the merger.

(c) *Dave Persad v Anirudh Singh [2017] UKPC 32*. This case is a reminder that piercing the corporate veil is only justified in very rare circumstances.

(d) *Zayo Group International Limited v Michael Ainger and others [2017] EWHC 2542 (Comm)*. In an application for striking out and summary judgment, the High Court considered the validity of notices of claims for breach of management warranties in an SPA made against seven individual sellers, who were the management of the target company, in light of various provisions in the sellers' limitations on liability. The buyer's warranty claims were struck out as one of the notices of claims was not served on one of the management sellers within the time period set out in the limitations on liability. The SPA provided that no management seller shall have any liability except where the buyer gives notice to the management sellers before a particular date. The High Court held that this meant that the claims against all the management sellers failed because there was a failure to notify **all** the management sellers within the time period. In obiter comments, the High Court considered that a clause which provides that a management seller has no liability for a warranty claim **to the extent that** provision or reserve in respect of the liability was made in the accounts meant that **if** there is a provision, there is no liability for the management seller. The Committee expressed some surprise at the views expressed by the judge on these points but acknowledged that these obiter comments raise some difficulties given that, if followed in future judgements, these views could produce a result not intended by a counterparty. Whilst obiter, the Committee's view was that these comments could not simply be ignored and it would be prudent to revisit standard form agreements to ensure that any drafting that uses the term "**to the extent that**" is reviewed to ensure that it is clear as to its intended effect.