THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 289th meeting
at 9:00 a.m. on 30 January 2018
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, Jessica Adam (as alternate for Robert Boyle), Lucy Fergusson, Nicholas Holmes, Simon Jay, John Adebiyi, Vanessa Knapp, Stephen Mathews, Chris Pearson, Richard Spedding, Patrick Speller, Richard Ufland, Martin Webster, Victoria Younghusband, Liz Wall and Kath Roberts.

Apologies: Chris Horton, Murray Cox and Robert Boyle.

The Chairman reported that Liz Wall, Chair of the Law Society, Company Law Committee would be attending Committee meetings on an ongoing basis to ensure that the work of the two Committees was joined up.

The Chairman welcomed Andrew Death, Acting Deputy Director, Business Frameworks at BEIS and his colleague, Gemma Johnson, Stakeholder Relationship Lead, Business Frameworks Directorate to the meeting.

2. **Extraordinary item: Brexit**

Andrew Death heads up the team with responsibility for ensuring company law, audit and accounting regulation function post Brexit. Andrew discussed with the Committee the main issues that BEIS has identified and its broad approach to addressing those issues in relation to Brexit.

Andrew's team has reviewed the key corporate, audit and accounting legislation to identify core amendments that will need to be made to ensure that the relevant UK legislation remains coherent post-Brexit.

It is expected that, overall, there will be 800 – 1000 statutory instruments (SIs) published for adoption in relation to Brexit. Royal assent for the Withdrawal Bill is expected to be sought some time between May and June but it is unlikely that the SIs will be published until after the summer recess. Andrew's team are intending to publish six SIs to address company law and accounting issues. The SIs will cover the following six areas:

a) Company law. It is intended there will be a single SI to make relevant amendments to the Companies Act 2006.

b) Audit. The SI will address both the adequacy/equivalence of the audit regime and recognition of third country audit standards. BEIS is working with the FRC in relation to its audit and accounting proposals.

c) Accounting. The SI will address deficiencies in the accounting regime post-Brexit and deal with the position that is ultimately reached on adoption/enforcement of IFRS.

d) Cross-border mergers. BEIS had previously thought that the cross-border mergers regime was little used in practice but now appreciated that this has been a misconception.

e) SEs and EEIGs. There are approximately 50 SEs and 300 EEIGs. The working assumption is that they will not have the same pan European status post Brexit. If not otherwise dealt with in the negotiated position with the EU then the SI is likely to create an interim UK SE vehicle with similar characteristics to an SE but without the ability to transfer its seat to an EU member state. BEIS is trying to speak to all SEs/EEIGs to discuss their preferences.

f) EGTCs (European Grouping of Territorial Cooperation – relevant to local and regional authorities).

3. **Approval of minutes**

The Chairman reported that the minutes of the meeting held on 29 November 2017 had been circulated to members for comment on 16 January 2018 and asked members to provide their comments to Kath Roberts by 5 February 2018.

4. **Matters arising**

4.1 The IA's public register of shareholder votes. The Committee noted that the Investment Association issued a press release on 19 December 2017 launching its public register of FTSE All-Share companies which have received votes of 20% or more against any resolution or withdrawn a resolution prior to the AGM. The press release states that over one-fifth of such companies are listed on the register. The main resolutions appearing on the register relate to remuneration or the re-election of directors.

4.2 Electronic AGMs: IA's position statement on virtual-only AGMs. The Committee noted that on 11 December 2017, the Investment Association published a position statement on the use of virtual-only AGMs. The statement reflects IA members' views that virtual-only AGMs are not in the best interests of all shareholders. It further states that IA members will not support amendments to articles of association in relation to electronic meetings if they allow for virtual-only AGMs; they expect any amendments to articles to confirm that a physical meeting will be held alongside an electronic meeting element. In addition, the IA's Institutional Voting Information Service will red-top any company that will have the ability to hold virtual-only AGMs following any amendments to their articles of association. It was noted that this position broadly aligns with the position published by the ISS in its 2018 Proxy Voting Guidelines.

4.3 Increasing audit thresholds for co-operatives and community benefit societies. The Committee noted that on 1 December 2017, HM Treasury issued a response to its consultation on increasing audit thresholds for co-operatives and community benefit societies. The Government is proceeding with the proposals to increase the thresholds at which co-operatives and community benefit societies are required to appoint an auditor from £2.8m assets and £5.6m turnover to £5.1m assets and £10.2m turnover. It was also noted that a draft of The Co-operative and Community Benefit Societies Act 2014 (Amendments to Audit Requirements) Order 2017 (together with a draft of the explanatory memorandum) was published on 6 December 2017 and is expected to come into force on 6 April 2018.

4.4 Fourth Anti-Money Laundering Directive: The Committee noted that, following a HM Treasury consultation, The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (SI 2017/1301) came into force on 18 January 2018. These regulations, which create the new Office for Professional Body AML Supervision (OPBAS), give the FCA powers to supervise professional body anti-money laundering supervisors in relation to compliance with anti-money laundering and counter terrorist financing requirements. It was also noted that on 23 January 2018, the FCA issued a press release announcing the launch of OPBAS and OPBAS published its final specialist sourcebook for professional body AML supervisors.

4.5 FRC guidance on auditors and preliminary announcements. The Committee noted that the FRC published a bulletin entitled "The Auditor's Association with Preliminary Announcements made in accordance with the UK Listing Rules". This supersedes the previous guidance and includes revisions to take account of developments in the Listing Rules, corporate governance and reporting and the use of alternative performance measures.

4.6 Penalties for enablers of defeated tax avoidance. The Committee noted that The Finance Act (No. 2) 2017 introduces a new penalty for any person who enables the use of abusive tax avoidance arrangements, which are later defeated. The Penalties for Enablers of Defeated Tax Avoidance (Legally Privileged Communications Declarations) Regulations 2017 (SI 2017/1245) came into force on 2 January 2018. A potential enabler who is a relevant lawyer, or a relevant lawyer acting on his behalf, may be unable to provide information in defence of a penalty because communications made by him, or on his behalf by a relevant lawyer, may be the subject of a claim to legal professional privilege. It was noted that these regulations make provision that in such circumstances a relevant lawyer may make a declaration that the communications in question demonstrate that the person potentially liable for a penalty is not an enabler without requiring the lawyer to breach legal professional privilege. On 22 December 2017, HMRC published its guidance on penalties for enablers of defeated tax avoidance.

4.7 CLLS Competition Law Committee's response to BEIS consultation on national security and infrastructure investment review. The Committee noted that the CLLS Competition Law Committee submitted responses to both the short term reforms and long term reforms set out in to the Green Paper on the Government's review of the national security implications of foreign ownership or control.

4.8 Brexit: FCA statement on EU withdrawal. The Committee noted that on 20 December 2017, the FCA published a short statement on EU withdrawal, which covers passporting, temporary permissions and the role of the FCA.

4.9 Prospectus Regulation conversion exemption. The Committee noted that, as agreed at the November 2017 Committee meeting, Mark Bardell of Herbert Smith Freehills had submitted to the FCA, a paper highlighting practical difficulties that have arisen in relation to listed investment funds as a result of the changes to the Prospectus Regulation which 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 paper was submitted on 16 January 2017 and is supported by the Committee. Mark reported that the FCA has indicated a willingness to engage on this issue.

4.10 Changes to Listing Rules and FCA Knowledge Base taking effect on 1 January 2018. The Committee noted that these changes were part of the FCA's review of the effectiveness of the primary markets and that the changes to the Listing Rules were set out in FCA policy statement PS 17/22 which the Committee discussed at its meeting on 29 November 2017.

5. **Discussions**

5.1 UK Corporate Governance Code. The Committee noted that on 5 December 2017, the FRC published for consultation proposed revisions to the UK Corporate Governance Code and Guidance on Board Effectiveness (along with a consultation document and document summarising the changes to the Code). This consultation follows on from the Government's response to its November 2016 Green Paper on corporate governance reform. It was noted that the proposed Code is shorter and more concise than the current version and that the consultation closes on 28 February 2018. The FRC aims to publish a final version of the Code by early summer 2018, to apply to accounting periods beginning on or after 1 January 2019. The Committee noted that a meeting of a Working Group of the Committee looking at the proposed changes to the Code was held on 17 January 2017, led by Nicholas Holmes of Ashurst. Nicholas reported on some general issues/areas of concern that had come out of the Working Group review, including (i) the duplication in the Code of legal and regulatory requirements found elsewhere, for example in the Companies Act or Listing Rules, (ii) an imprecision of language, in particular in relation to the description of directors' duties and stakeholder interests which does not align with the directors statutory duties as set out in section 172 of the Companies Act which might give rise to confusion, (iii) changes to the determination of director's independence including, in particular, the removal of board discretion relating to determining whether a non-executive director should be treated as independent or not and an ongoing requirements to assess the independence (or otherwise) of the chairman rather than just at the time of his/her appointment, and (iv) the removal of the exemptions from compliance with certain provisions of the Code for companies outside the FTSE 350. These and other issues would be addressed in the Working Group's response.

5.2 Draft regulations prohibiting restrictions on assignment of receivables. The Chairman gave an update on the meetings which he had attended with BEIS and representatives

from other specialist CLLS Committees and on the current draft of the regulations circulated by BEIS.

5.3 Law Commission's Thirteenth Programme of Law Reform. The Committee noted that on 14 December 2017, the Law Commission issued a press release launching its Thirteenth Programme of Law Reform. Three projects of interest are: (i) electronic signatures (expected start date/duration – December 2017 / 9-18 months); (ii) intermediated securities (expected start date/duration – as and when resources allow / 12 months); and (iii) smart contracts (expected start date/duration – may run in conjunction with electronic signatures / 9-18 months).

The Chairman reported that Stephen Lewis at the Law Commission has contacted both him and the Chair of the CLLS Financial Law Committee in relation to the Law Commission's project on electronic signatures, with a view to meeting to discuss issues regarding electronic execution of documents and the scope of their project.

Vanessa Knapp noted that the Committee should keep a watching brief on the Law Commission's project on intermediated securities as this may raise some company law issues regarding recognition of shareholders.

5.4 Joint Working Group draft notes on guarantees and intra-group loans in light of the position reflected in the ICAEW TECH 02/17. The Chairman, together with Liz Wall and Vanessa Knapp, provided an update to the meeting on the current status of the notes. In particular, the note on unsecured guarantees was close to being finalised but reaching a settled position on intra-group loans was more difficult, particularly if the loan was not an interest-free on-demand loan. The intention is for the Joint Working Group to engage with the ICAEW before publishing the notes. It was agreed the Committee would look at this issue again at its next meeting.

5.5 Meeting with BEIS regarding application of IFRS post-Brexit. Lucy Fergusson reported that she has been involved in discussions with BEIS regarding the application of IFRS post-Brexit. BEIS is considering a number of options, including whether the UK should continue to apply EU IFRS, IFRS as issued or a UK adopted and endorsed form of IFRS. Lucy reported that broadly speaking, no major jurisdiction adopts IFRS in the form issued but if the UK were to continue to apply EU IFRS we would no longer have any formal input into its formulation. If the UK were to move to UK IFRS, a body would need to be identified to deal with the endorsement of UK IFRS and consideration would need to be given to the endorsement criteria that the relevant body would apply. This might over time lead to divergence between UK IFRS and EU IFRS which could have wider implications. The Chairman noted that his firm had had a similar meeting with BEIS on this issue.

6. Recent developments

The items set out at 6.1 to 6.8 below were duly noted but, given pressure of time, were not discussed at the meeting.

6.1 Company Law

It was noted that there were no items in relation to company law to consider.

6.2 **Corporate Governance**

The Committee noted that on 4 December 2017, the FRC issued a press release stating that it intends to finalise its Guidance on the Strategic Report after the Government publishes its legislative changes in respect of reporting on s.172 Companies Act 2006 (which are expected in March 2018). The press release also states that the FRC has published FAQs to assist companies with implementing the Companies Act 2006 provisions on non-financial reporting.

The Committee noted that on 8 December 2017, PERG published its tenth report on conformity with the Walker Guidelines.

6.3 **Reporting and Disclosure**

The Committee noted that on 28 November 2017, The Statutory Auditors Regulations 2017 were made. The regulations came into force, for the most part, on 1 January 2018. They complete the UK's transposition of the EU Audit Directive and Audit Regulation and align the audit and accounting framework for LLPs with that applying to companies.

The Committee noted that on 18 December 2017, ESMA issued a press release announcing that it has published its final report on the draft regulatory technical standards on the ESEF. The ESEF is the machine-readable format in which issuers with securities listed on regulated markets will, for financial years beginning on or after 1 January 2020, prepare annual financial reports. ESMA has submitted the final report to the European Commission, which has three months to decide whether to endorse the technical standards.

The Committee noted that on 18 December 2017, the FRC's Audit & Assurance Lab issued a press release announcing the publication of a report on audit committee reporting.

The Committee noted that on 13 December 2017, the FRC's Financial Reporting Lab published a report on the use of eXtensible business reporting language (XBRL) in corporate reporting.

The Committee noted that on 12 December 2017, the FRC published a thematic review on materiality. The review explains the concept of audit materiality and how major firms determine materiality in practice.

The Committee noted that on 23 November 2017, the FRC's Financial Reporting Lab published a report on risk and viability reporting, which examines the views of companies and investors on the key attributes of principal risk and viability reporting, their value and use.

6.4 **Equity Capital Markets**

The Committee noted that on 15 December 2017, ESMA published a consultation paper seeking views on its proposed draft regulatory technical standards under the new Prospectus Regulation. The consultation closes on 9 March 2018. It was noted that there was a Joint Working Group call on 22 January 2018 to discuss the consultation paper.

The Committee noted that on 7 December 2017, the FCA made the MiFID 2 (Deferred Matters) Instrument 2017 (FCA 2017/77). This instrument amended the definition of "qualified investor" to align it with the definition in s.86(7) FSMA and PR 1.2.1 UK which reproduces s.86(7) FSMA, as a consequence of changes to s.86(7) FSMA to implement MiFID II.

The Committee noted that on 1 December 2017, the FCA published quarterly consultation paper CP17/39. It proposes to change: (i) Premium Listing Principle 6 (communications with holders of equity shares) to explicitly make reference to the "continuation" as well as the "creation" of a false market; and (ii) two rules in DTR 7.2 to clarify that the information on diversity reporting must be contained within the corporate governance statement and that such statement may be made in a separate report published with the annual report or through website publication (as already allowed by DTR 7.2.9R for other parts of the corporate governance statement). The meeting also noted that on 16 January 2018, the Joint Listing and Prospectus Rules Working Group circulated for comment a draft response to this consultation.

The Committee noted that following an application to the FCA by the LSE, AIM was registered as a SME Growth Market on 3 January 2018. The meeting noted that consequential changes have been made to the AIM Rules for Companies, which came into force on 3 January 2018 (these were covered in AIM Notice 48, which contains a link to an extract of the changes).

The Committee noted that on 14 December 2017, the London Stock Exchange published an AIM Disciplinary Notice (AD 17) which contains a summary of enforcement matters brought by the LSE that were concluded as private censures and fines during 2017 for breaches of the AIM Rules for Companies and AIM Rules for Nominated Advisers. It also provides guidance to AIM companies and nominated advisers on the expected standards of conduct.

The Committee noted that on 11 December 2017, the LSE published AIM Notice 49 stating that it has published a feedback statement and consultation. The feedback statement provides feedback to the LSE's discussion paper issued on 11 July 2017, which invited feedback on various areas of the AIM Rules for Companies and AIM Rules for Nominated Advisers, and the consultation proposes changes to such rules. The meeting noted that the consultation closes on 29 January 2018 and that on 16 January 2018, the Joint Listing and Prospectus Rules Working Group circulated for comment a draft response to this consultation.

The Committee noted that on 18 December 2017, the European Commission launched a public consultation on how to make it easier for small and medium enterprises (SMEs) to access public markets. The meeting noted that the consultation closes on 26 February 2018.

The Committee noted that on 20 December 2017, ESMA published a press release stating that it had issued a statement to support the smooth introduction of the LEI requirements after becoming aware that not all investment firms would succeed in obtaining LEI codes from all of their clients before 3 January 2018. The statement sets out certain temporary arrangements for six months. It was noted that the FCA issued a response to ESMA’s statement.

6.5 **MAR**

The Committee noted that on 14 December 2017, ESMA published an updated version of its Q&A on the MAR which includes a new question that clarifies the time span for the calculation of the CO_2 equivalent emissions and rated thermal input that should be considered to determine whether a participant in the emission allowance market is subject to MAR (new Q&A 11.1).

The Committee noted that on 14 December 2017, the FCA issued a press release and final notice stating it had fined Tejoori Limited £100,000 (discounted to £70,000 for early settlement) for failing to inform the market of inside information as required by Article 17(1) MAR. It was noted that this is the first fine the FCA has imposed on an AIM company for late disclosure following the introduction of MAR.

The Committee noted that on 13 December 2017, The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No. 2) Regulations 2017 (SI 2017/1255) were published, which make two minor changes to Part 8 and 11 of the Financial Services and Markets Act 2000 to correct minor errors in the UK's original implementation of MAR.

6.6 **Accounting**

It was noted that there were no matters in relation to accounting to consider.

6.7 **Takeovers**

The Committee noted that on 11 December 2017, the Code Committee of the Takeover Panel published its response statement (RS 2017/1) following its consultation on proposed amendments to the Takeover Code in relation to asset sales and other matters and Instrument 2017/4, which includes the amendments to the Takeover Code introduced as a result of RS 2017/1. In addition, the meeting noted that the Panel published Instrument 2017/7, which makes a consequential amendment to the Documents Charges section of the Code to reflect the amendments made. It was noted that these changes to the Code took effect on 8 January 2018.

The Committee noted that on 11 December 2017, the Code Committee of the Takeover Panel published its response statement (RS 2017/2) following its consultation on proposed amendments to the Takeover Code in relation to statements of intention, timing of publication of offer documents and reports and confirmations in relation to post-offer intention statements and Instrument 2017/5, which includes the amendments to the Takeover Code introduced as a result of RS 2017/2. It was noted that these changes to the Code took effect on 8 January 2018.

The Committee noted that on 11 December 2017, the Code Committee of the Takeover Panel published Instrument 2017/6, which amends the definitions of "multilateral trading facility" and "regulated market" in the Takeover Code to cross refer to the equivalent definition in MiFID II (2014/65/EU). It was noted that these changes to the Code took effect on 3 January 2018.

The Committee noted that on 8 January 2018, The Takeover Panel issued Panel Statement 2018/1 announcing the: (i) publication of amended pages of the Takeover

Code to reflect the amendments made by Instruments 2017/4, 2017/5, 2017/6 and 2017/7 (see items 6.7(a) to (c)); (ii) amendment of Practice Statement No 28 (Rules 2.8 and 35.1 – Entering into talks during a restricted period); (iii) publication of new Practice Statement No 32 (Rule 21.1 – Application following the unequivocal rejection of an approach); and (iv) publication of a new checklist to be completed and submitted to the Panel Executive by the financial adviser to an offeree company which publishes a circular or announcement under the new Rule 21.1(d)(iii) or Rule 21.1(e). It was also noted that certain of the other checklists have also been updated and that the new and updated checklists, which should be used with immediate effect, can be downloaded from the Checklists page of the Takeover Panel's website.

6.8 **Miscellaneous**

The Committee noted that on 7 December 2017, the BVCA issued a press release stating that it had published revised versions of its standard form documents (articles of association and a model subscription and shareholders' agreement) for use in early stage venture capital investments. Limited changes have been made which include changes to address the PSC register requirements and the language on deferred shares and drag-along. It was noted that the BVCA has also published drafting notes prepared by Practical Law to accompany the above-mentioned documents.

The Committee noted that on 18 January 2018, BEIS published a press release stating that the government will publish draft laws this summer requiring overseas legal entities to provide their beneficial ownership information when they own or purchase property in the UK (or are participating in central government contracts) and that the public register of beneficial ownership of overseas legal entities will go live by early 2021.

6.9 **Cases**

The Committee noted the following cases:

In the matter of M2 Property Invest Limited and Vendor Wind Service sp. z.o.o. [2017] EWHC 3218 (Ch). In an application for the approval of the completion of a proposed cross-border merger pursuant to regulation 16 of the Companies (Cross-Border Mergers) Regulations 2007, the High Court had to consider the question of whether and if so, to what extent, the English court should, on application under regulation 16, investigate the impact of a cross-border merger on the creditors of two merging companies. Mr Justice Snowden did not need to give a final view on this question. However, his initial inclination was that it is for the English courts to consider the interests of all creditors of both merging companies before exercising its discretion to approve the completion of the merger; but on reflection he could see that there is much to be said for the proposition that the English court should not, at the stage of the approval hearing, concern itself with the interests of creditors of either company, because it is for the domestic laws of each merging company to protect the interests of the respective creditors of those companies at the pre-merger stage.

The Panel on Takeovers and Mergers v David Cunningham King [2017] CSOH 156. The Scottish Court of Session considered an application from the Panel for a court order under s.955 Companies Act 2006 ordaining Mr King to make a mandatory offer

for all the shares in Rangers International Football Club plc not already controlled by him or his concert parties pursuant to Rule 9 of the Takeover Code i.e. an application by the Panel for a court order to secure compliance with a rule-based requirement. The Court ordered Mr King to make a Rule 9 mandatory offer at a price of 20p per share. The Court also held that it has the discretion to refuse to grant an order in terms of s.995 and the Court's function is not just to act as a rubberstamp. However, the judge stated that he believed that the Court would, in nearly all cases, be willing to grant an order to enforce a decision of the Panel if asked to do so; but there may be very rare cases where it may not do so. The Committee noted the judge's comments that, whilst the Court would, in nearly all cases, be willing to grant an order to enforce a decision of the Panel, it retained a discretion not to do so, although the Committee thought it unlikely however that a Court would go against the views of the Panel other than in an extreme scenario.

Kason Kek-Gardner Limited v Process Components Limited [2017] EWCA Civ 2132. The Court of Appeal held that a licence agreement containing a clause obliging each party to keep the terms of the agreement confidential was not subject to an implied term that would permit a party to the agreement to disclose the agreement to a potential buyer of the shares in that party. The licence agreement also provided that any breach of the confidentiality clause by one party was a non-remediable material breach entitling the other party to terminate the agreement immediately. Therefore, it was also held that, as the licensee had disclosed the licence agreement to a potential buyer as part of a due diligence process for the sale by the licensee's shareholders of their shares in the licensee (and there was no implied term permitting this), the licensor was entitled to terminate the agreement for breach of the confidentiality clause. The Committee thought that this was an unsurprising decision. In this case, the consequences for failure to keep the terms of the agreement confidential were fairly draconian (the ability for the counterparty to immediately terminate) but the case was a good reminder to lawyers to check not just the existence of such provisions but also the consequences and to advise clients in advance of the risks/consequences of disclosure to a potential purchaser.

Teoco UK Limited v (1) Aircom Jersey 4 Limited (2) Aircom Global Operations Limited [2018] EWCA Civ 23. The Court of Appeal had to determine whether a warranty claim had been validly made where the sale and purchase agreement contained a seller's limitation on liability which required a warranty claim notice to set out reasonable details of the claim (including the grounds on which it is based and the purchaser's good faith estimate of the amount of the claim). It held that in general "setting out" the "grounds" of a claim required explicit reference to particular warranties or other provisions.

Easynet Global Services Limited [2018] EWCA Civ 10. The Court of Appeal overturned the High Court decision that the proposed transaction, to merge a number of UK companies and a Dutch company into a UK transferee company, was not the kind of transaction which the Cross-Border Mergers Regulations and the Cross-Border Mergers Directive were enacted to facilitate because the inclusion of the Dutch company (which was dormant, had never traded and had no appreciable assets) in the transaction was a "device" to bring it within the scope of the CBM Regulations. The Court of Appeal held that the proposed merger arrangements constituted a cross-border merger and fell within the scope of the CBM Regulations and CBM Directive

and that it was not an abuse of law. The Committee thought that this was a helpful decision. The Committee also noted the following obiter comments:

The appellant and its associated companies did not wish to use the first option because of difficulties in relation to transferring contracts of transferor companies to the appellant as the transferee company, as explained by Henderson J in Re TSB Nuclear Energy Investment UK Ltd [2014] EWHC 1272 (Ch) at [11]-[12]; and see Nokes v Doncaster Amalgamated Collieries [1940] AC 1014 . By contrast, under the procedure in the 2005 Directive and the Regulations the court can sanction transfers of contracts from transferor companies to the transferee company by a form of statutory novation.

This latter sentence was considered helpful as the CBM Directive and the CBM Regulations are not clear about the legal means by which a transfer of contracts under a cross border merger is effected. These comments, although obiter, confirm that the transfer should be treated as a form of statutory novation.

7. **Any other business**

The Committee noted the next MAR roundtable meeting was scheduled for 14 March and was likely also to operate as a more general liaison meeting with the FCA following the discussion between the Chairman and Jim Moran of the FCA. Lucy Fergusson offered to host the meeting at Linklaters.

Mark Austin noted that there is separate group involving AFME and ICMA which is currently looking at the changes to the IPO process and the role of research analysts in the IPO process which take effect on 1 July 2018.