THE CITY OF LONDON LAW SOCIETY  
COMPANY LAW COMMITTEE

Minutes

for the 297th meeting  
held at 9:00 a.m. on 22nd May 2019  
at Clifford Chance LLP, 10 Upper Bank Street, London E14 5JJ

1. **Welcome and apologies**

**Attending**: David Pudge (Chairman), John Adebiyi, Mark Austin, Sam Bagot, Adam Bogdanor, Robert Boyle, Murray Cox, Lucy Fergusson, Nicholas Holmes, Chris Horton, Vanessa Knapp, Stephen Mathews, Chris Pearson, Patrick Sarch, Patrick Speller, Richard Ufland, Liz Wall, Martin Webster, Victoria Younghusband and Kath Roberts (Secretary).

**Apologies**: Caroline Rae and Richard Spedding.

1. **Changes to membership**

The Chairman reported that Mark Bardell was stepping down from the Committee and that Caroline Rae would be replacing Mark on the Committee. The Chairman asked the Secretary to note the Committee's thanks to Mark for his contribution to the work of the Committee.

1. **Approval of minutes**

The Chairman reported that a final version of the minutes of the meeting held on 27 March 2019 had been circulated to members on 30 April 2019. The Chairman asked members to submit any final comments by 25th May.

1. **Matters arising**
   1. Post-legislative scrutiny of the Bribery Act 2010. The Committee noted that on 13 May 2019, the Ministry of Justice published the Government's response to the conclusions and recommendations of the House of Lords Select Committee on the Bribery Act 2010 set out in its post-legislative scrutiny report on the Bribery Act 2010.

The Committee noted, in particular, that the Government (i) had no plans to change the law in relation to facilitation payments, which it considers a form of bribery; (ii) did not intend to publish any guidance or procedures on what would be likely to provide a defence to the charge that the organisation had failed to prevent bribery (s.7 Bribery Act); and (iii) did not consider itself best placed to provide any clarification on what might constitute acceptable corporate hospitality, other than to note that the Act was never intended to prohibit "reasonable and proportionate" hospitality.

* 1. Letter to Companies House on electronic signatures*.* The Committee noted that on 1 May 2019, the Chairman received a response from Companies House to his letter on electronic signature.

The Chairman reported that the letter stated that Companies House did not have any objection in principle to accepting electronic signatures on paper documents (referring to charge documents) but flagged that there are issues to which Companies House would need to give further thought before applying this to other forms of document (although it did not give any details as to what such issues are). Companies House asked whether the Committee was considering any particular types of electronic signature, pointing out that the Law Commission consultation refers to different forms of electronic signature covering documents ranging from a scanned manuscript signature to documents with digital signatures. The Chairman reported that he was intending to respond to say that both the Law Commission consultation paper and the Law Society/CLLS/Hapgood note on electronic signatures published in 2016 are technology neutral and as such, the conclusions of the Law Commission/CLLS are not dependent on the type of electronic signature applied and, as such, the Committee believes that Companies House should take the same approach and its policy should not depend on the form of electronic signature. That response was subsequently sent to Companies House.

* 1. New EU company law to help companies move across borders and find online solutions*.* The Committee noted that on 18 April 2019, the European Parliament resolved at first reading to adopt, with amendments, the European Commission's proposals for a directive amending Directive (EU) 2017/1132 as regards: (i) cross-border conversions, mergers and divisions; and (ii) the use of digital tools and processes in company law.

It was reported that there were some mistakes in the text and, as such, a corrigendum would be required, meaning the directive was unlikely to be published into the Official Journal before September/October 2019 and, accordingly, the chances of the UK having to adopt its provisions look slim on the basis that the UK is expected to leave the EU by 31 October 2019. It was noted that it is expected that the UK will still have regard to developments in EU company law in order to assess whether the UK company law framework remains competitive and that the UK continues to be an attractive place to do business.

* 1. ESMA Q&As that clarify prospectus and transparency rules in the event of a no deal Brexit. The Committee noted that on 11 April 2019, ESMA published an updated version of its Q&A on prospectuses and an updated version of its Q&A on the Transparency Directive. The meeting also noted minor changes had been made to the Q&As that were inserted on 31 January 2019 to address a no‑deal Brexit scenario to reflect the fact that "exit date" was no longer 29 March 2019.
  2. Brydon review into UK audit standards. The Committee noted that on 10 April 2019, BEIS published a call for views on the quality and effectiveness of audit by the Sir Donald Brydon independent review which invites views, information and evidence on, in particular, the purpose of audit and for whom it should be carried out, whether its scope and purpose should be widened and strengthened to meet changing expectations of audit, how the quality of the audit process and product could be improved, whether audit findings could be better communicated, the role of audit within wider business assurance and in relation to directors’ legal responsibilities, the role of audit in detecting fraud and auditor liability. The meeting noted the consultation closes on 7 June 2019.

It was noted that a joint working group of the Committee and the Law Society Company Law Committee, led by Vanessa Knapp, held a call on 13 May 2019 to discuss a response to the Brydon review. Some of the areas to be addressed by the joint working group in the response include the following:

* The possible expansion of auditor liability to a wider group of users of accounts;
* Whether directors should be required to make more explicit statement on risk management and internal control;
* Whether directors should be required to make a statement about the sustainability of the company's business model;
* Whether directors should be required to include a statement of the company's distributable and non-distributable reserves in the annual accounts;
* Whether there should be greater dialogue between the auditor and the users of accounts, for example, an "annual assurance meeting", open to all stakeholders; and
* The involvement of shareholders in planning for audit.
  1. BEIS initial consultation on the independent review of the Financial Reporting Council*.* The Committee noted that a joint working group of the Committee and the Law Society Company Law Committee led by Vanessa Knapp is in the process of finalising a response to this consultation.

The Committee discussed a number of concerns arising from the proposals in the consultation which are addressed in the response, including:

* The ability for the new regulator to require a skilled person's report be produced and for it to be paid for by the company. It was noted that the circumstances in which any such report could be requested are unclear at present;
* The proposal that the new regulator should have powers to order corrections to accounts. It was noted that the Companies Act 2006 contains provisions which enable a court to order corrections to accounts and that it is unclear whether the proposed powers of the new regulator would replace those of the court. In addition, the Committee noted that the consultation does not currently indicate what rights of appeal there might be against any decision of the new regulator to order corrections.
* The proposal for a separate liability regime for the accounts which would apply only to the CEO, CFO, Chair and Audit Committee Chair. The response flags concerns about creating a regime which undermines collective board responsibility for the accounts.
  1. FRC consultation on the UK Stewardship Code*.* The Committee noted that on 10 and 11 April 2019, the FRC published the responses to its consultation on a revised UK Stewardship Code. The meeting noted the consultation closed on 29 March 2019 and the FRC’s draft Plan and Budget 2019/20 published on 27 March 2019 states that the FRC will introduce a revised UK Stewardship Code in 2019/20.

The meeting noted that the response submitted by the BEIS Select Committee to the consultation states that the select Committee is of the view that the proposed amendments to the Code do not go far enough and that a new approach should be considered (without specifying what any such approach should be). It was reported that the LAAP were responding to the consultation.

* 1. Consultations on stewardship. It was noted that the Committee had submitted a response to: (i) the FRC's consultation on the UK Stewardship Code on 29 March 2019; and (ii) the FCA/FRC's joint discussion paper on building a regulatory framework for effective stewardship (DP19/1) on 29 April 2019.

The meeting also noted that a joint response of the Committee and the Law Society Company Law Committee to the FCA's consultation paper on proposals to improve shareholder engagement (CP19/7) was submitted on 27 March 2019.

* 1. Primary Market Bulletin No. 20. The Committee noted that on 22 March 2019, a joint response of the Committee and the Law Society Company Law Committee was submitted to the FCA in relation to Primary Market Bulletin No. 20, along with an accompanying mark-up of certain of the FCA Technical/Procedural Notes.
  2. FCA consultation on changes to align the FCA Handbook with the Prospectus Regulation. The Committee noted that a joint response of the Committee and the Law Society Company Law Committee to the FCA's consultation paper on changes to align the FCA Handbook with the Prospectus Regulation (CP19/6) was submitted on 28 March 2019.

1. **Discussions**
   1. Statutory audit services market study - CMA final report. The Committee noted that on 18 April 2019, the Competition and Markets Authority (**CMA**) issued a press release announcing the publication of its final report on the statutory audit services market study (along with a final summary report), which sets out recommendations to address what the CMA has identified as serious competition issues in the UK audit industry.

The Committee discussed the CMA's four key recommendations for reforming the statutory audit market:

* Greater scrutiny and increased accountability of Audit Committees through enhanced regulatory oversight;
* That FTSE350 companies be subject to joint audit by two audit firms, one of which must not be a Big Four accountancy firm – it was noted that in France there is a system for joint audits. It was noted that it is intended that the introduction of this requirement be phased in, in order to give challenger firms time to build up their expertise and the staffing levels required to undertake this work. The Committee noted however that this approach is likely to increase costs for companies as they will have to pay two sets of fees in relation to the audit. The meeting also noted the need for these proposals to be joined up with the work being undertaken by Sir Donald Brydon (see item 4.5 above) as the Brydon Review is looking at the wider issue of auditor liability.
* Measures to mitigate the demise of one of the Big Four accountancy firms (should this occur) – the Committee noted the CMA's desire, in the event of the collapse of one of the Big Four, to limit the extent to which clients and staff of the firm in question transfer to the remaining Big Three firms, increasing concentration in the market. It was noted that the CMA would like to see clients transferred to a new firm or non-Big Three firm or remain within the same firm during turnaround efforts.
* An operational split in audit firms of audit and non-audit activities, which will include a prohibition on fee sharing – in this regard, the Committee discussed concerns that audit fees may increase, not least if firms are required to undertake extra work reviewing the work of other audit firms as part of the joint audit proposals.

It was noted that the CLLS Competition Committee is looking more widely at the proposals to reform the CMA - including its stated intention to act as a consumer champion - with a view to considering whether these proposals will have any possible impact on corporate transactions.

* 1. Primary Market Bulletin No. 23*.* The Committee noted that on 16 April 2019, the FCA published the 23rd edition of the Primary Market Bulletin. The meeting noted this edition contains the feedback to the FCA consultation on updating its Technical Note on periodic financial information and inside information (FCA/TN/506.2) and that the final version of the note is the same as that published for consultation in June 2018 apart from the addition of a reminder about the need to maintain confidentiality of inside information where disclosure has been delayed.

The meeting noted this edition also covers the FCA's findings and expectations on some of the issues raised in its recent supervisory review of the new regulatory requirements for firms managing securities offerings (the MiFID II rules governing the provision of underwriting and placing services and the domestic reforms on the availability of information in the UK IPO process) and provides an update on the implementation of the Prospectus Regulation (which is due to come into full effect on 21 July 2019).

* 1. BEIS consultation on corporate transparency and register reform. The Committee noted that on 5 May 2019, BEIS published a press release announcing the publication of a consultation on corporate transparency and register reform. The Chairman reported that BEIS is consulting on new proposals to enhance the role of Companies House, increase the transparency of UK corporate entities and help combat economic crime. The meeting noted that the consultation closes on 5 August 2019.

It was agreed that the Committee should form a working group to respond to this consultation and that it would do so in conjunction with the CLLS Financial Law Committee. Members interested in participating in the working group were invited to contact the Secretary after the meeting.

The Committee was of the view that the proposed changes were very wide ranging, would require legislation and would result in some significant changes to current practice. In particular, the meeting noted both the proposal that a director be unable to act until his/her identify has first been verified and the proposal that there be a limit on the number of directorships a person may hold. It was noted that this latter proposal may raise issues for groups where directors often sit on a large number of subsidiary company boards.

* 1. Takeover Panel request for views on Rule 21.2 and Rule 31.6. The Committee noted that on 8 May 2019, Chris Pearson emailed members of the Takeovers Working Group, at the request of the Takeover Panel, seeking their firm's view on two issues as the Panel is considering whether these issues need to be clarified in the Takeover Code/Practice Statements.

The meeting noted the two issues relate to advisers' awareness and understanding of the Panel's position on: (i) the inclusion of an obligation (in a confidentiality agreement with a most-favoured nation standstill provision) on the offeree to notify the potential bidder that: (a) it has entered into a confidentiality agreement with another potential bidder which does not contain a standstill provision; or (b) the standstill provision in a confidentiality agreement between the offeree and another potential bidder has fallen away, in the context of Rule 21.2 (offer-related arrangements); and (ii) the Panel's practice on freezing the offer timetable if there is a delay in the decision on whether there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings (see Rule 31.6 and Note 5 on Rule 31.6). The meeting noted that the Panel's position is that (i) is considered to be an offer-related agreement and therefore not permitted and in relation to (ii) either the offeror or the offeree can request the freeze.

The Committee agreed that this type of informal dialogue between the Panel and the Takeovers Joint Working Group was helpful and provided a welcome opportunity to discuss relevant issues with the Panel and for the Panel to clarify its position on certain matters.

* 1. FCA/CLLS Liaison Group meeting. The Chair reported that the next FCA/CLLS Liaison Group meeting was to be held on 3 July 2019. The Committee agreed to raise the following issues for discussion at the meeting:
* The FCA's approach to mix and match elections.
* The AMF's fine of the Iliad CEO (see item 6.5(a) below).
* Possible Primary Markets Bulletin covering the FCA's general expectations around appropriate systems, procedures and controls; noting the Cathay International decision notice.
* Technical note 506.2 regarding periodic financial information.
* The letter from the Commission to ESMA seeking technical advice on the operation of MAR.
* The Brydon review and proposed audit reforms generally.

Members were asked to send any additional agenda items to the Secretary and to Victoria Younghusband.

1. **Recent developments**
   1. **Company law**
      1. Draft Companies (Directors’ Remuneration Policy and Directors’ Remuneration Report) Regulations 2019. The Committee noted that on 8 April 2019, a draft of The Companies (Directors’ Remuneration Policy and Directors’ Remuneration Report) Regulations 2019 and explanatory memorandum were published. These regulations amend the Companies Act 2006 (**CA 2006**) and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 in order to implement Article 9a (right to vote on a company’s remuneration policy) and Article 9b (information to be provided in and right to vote on the remuneration report) of the Shareholder Rights Directive as inserted by the Shareholder Rights Directive II (**SRD II**). The meeting noted that the measures in Articles 9a and 9b are required to be implemented in UK law by 10 June 2019 and these regulations ensure that the implementation works with the framework already in place in UK legislation with regards to directors’ remuneration. If passed, these regulations will come into force on 10 June 2019.
   2. **Corporate governance**
      1. The Proxy Advisors (Shareholders’ Rights) Regulations 2019. The Proxy Advisors (Shareholders’ Rights) Regulations 2019 were made on 13 May 2019 and come into force on 10 June 2019. The Chairman reported that an explanatory memorandum has also been published. The meeting noted that these regulations transpose Article 3j of SRD II into UK law which requires proxy advisors to: (i) disclose reference to a code of conduct which they apply, and report on the application of the code, indicating where they depart from its recommendations and why. Where they do not apply a code of conduct at all, they must explain why this is the case; (ii) disclose information on their research capabilities and how they produce their advice and voting recommendations; and (iii) identify and disclose any actual or potential conflicts of interests or business relationships that may influence the preparation of their research. The Chairman reported that the FCA is given responsibilities under these regulations to enforce the requirements in Article 3j, including powers to sanction breaches of the proxy advisor's obligations under these regulations through public censure and/or financial penalties.
      2. BEIS Committee report on executive rewards*.* The Committee noted that on 26 March 2019, the BEIS Committee published a press release and report on executive rewards. The meeting noted the report states that companies must do more to link top bosses’ pay to that of the rest of their workforce.
   3. **Reporting and disclosure**
      1. FRC/ICAEW guide to help smaller listed companies improve financial reporting*.* The Committee noted that on 13 May 2019, the FRC issued a press release announcing the publication by the FRC and ICAEW of a new guide to help smaller listed and AIM quoted companies improve their financial reporting. The meeting also noted the guide addresses issues raised by the FRC about the quality of financial reporting in this sector and provides practical tips and questions for Audit Committees to consider, with a view to driving up the quality of smaller quoted company financial reporting.
   4. **Equity capital markets**
      1. FCA no deal Brexit final instruments and guidance. The Committee noted that on 29 March 2019, the FCA issued a press release announcing the publication of final instruments and guidance that would apply in the event the UK leaves the EU without a deal or an implementation period.
      2. ESMA guidelines on risk factors under the Prospectus Regulation*.* The Committee noted that on 29 March 2019, ESMA published its final guidelines on risk factors under the Prospectus Regulation that set out how national competent authorities should review risk factors, as required by the Prospectus Regulation.
      3. ESMA technical advice on minimum information content for prospectus exemption. The Committee noted that on 29 March 2019, ESMA published its final technical advice on minimum information content for the prospectus exemption. The meeting also noted that under the Prospectus Regulation, issuers may offer/admit securities in connection with takeovers, mergers or divisions without publishing a prospectus, provided that a document is made available to investors describing the transaction and its impact on the issuer.
      4. ESMA Q&As on the Prospectus Regulation. The Committee noted that on 27 March 2019, ESMA published the first Q&As on the Prospectus Regulation. The meeting also noted the Q&As provide clarification on the: (i) scope of the grandfathering of prospectuses approved under the national laws of Member States implementing the Prospectus Directive; (ii) applicability of the current level 3 guidance concerning the Prospectus Directive after the entry into application of the Prospectus Regulation; and (iii) process of updating the information included in registration documents and universal registration documents.
      5. AFME equity selling restrictions wording for Brexit. The Committee noted that on 27 March 2019, the Association for Financial Markets in Europe published model wording for selling restrictions for equity transactions for use following a no deal Brexit or a Brexit with a deal and transitional period.
   5. **MAR**
      1. AMF enforcement decision against Iliad CEO. The Committee noted that, on 29 April 2019, AMF published a press release regarding an AMF enforcement decision (no English translation of the decision is available) against Iliad CEO, Maxime Lombardini. The meeting noted the decision is of interest for two reasons (notwithstanding the events occurred pre-MAR): (i) Mr Lombardini was found to have committed insider dealing even though he dealt as part of a pre-determined strategy of exercising stock options and then selling. Bloomberg reports that the AMF Enforcement Committee concluded that "it was up to him to stop the sale"; and (ii) the UBS employee who learned of the inside information relating to Iliad by looking over his neighbour's shoulder on the Eurostar, and who then passed that information to his supervisor who then further disseminated the information to other employees for the purposes of preparing a pitch to the issuer, was found to have disseminated the information in the normal course of the exercise of his duties.
      2. Updated ESMA Q&A on MAR. The Committee noted that on 29 March 2019, ESMA updated its Q&A on MAR to clarify the scope of firms subject to MAR provisions to detect and report suspicious orders and transactions, and provide new detailed answers on the meaning of parent and related undertakings and disclosure of inside information concerning emission allowances.
   6. **Accounting**
      1. BEIS Committee report on the Future of Audit. The Committee noted that on 2 April 2019, the BEIS Committee published a press release and report following its inquiry into the future of audit that sets out its recommendations for audit reform. The meeting also noted the report feeds into the independent reviews of Sir John Kingman into the FRC and of Sir Donald Brydon into UK audit standards (see item 4.5), as well as the CMA's market study of the statutory audit market in the UK (see item 5.1).
   7. **Takeovers**
      1. Panel Statement 2019/8 and Instrument 2019/3 - UK's withdrawal from the EU*.* The Committee noted that on 4 April 2019, the Panel issued Panel Statement 2019/8 announcing the publication of Instrument 2019/3 which will make changes to the Takeover Code on exit day to reflect the UK's withdrawal from the EU.
      2. Panel Statement 2019/6 and Instrument 2019/2 - UKLA references*.* The Committee noted that on 25 March 2019, the Panel published Panel Statement 2019/6 announcing the publication of Instrument 2019/2 which amended the Takeover Code with effect from 1 April 2019. The meeting also noted the changes made reflect that the FCA no longer uses the name "UK Listing Authority" and the "UKLA Rules" – references in the Takeover Code have therefore been amended to the "FCA" and the "FCA Handbook" respectively.
   8. **Miscellaneous**
      1. HM Treasury consultation on the transposition of the Fifth Money Laundering Directive. The Committee noted that on 15 April 2019, HM Treasury published a consultation on the transposition of the Fifth Money Laundering Directive. The meeting also noted the Directive came into force on 9 July 2018 and must be implemented by Member States by 10 January 2020. It was noted that the consultation closes on 10 June 2019.
      2. The Pensions Regulator: Regulatory intervention report issued in relation to the GKN PLC Pension Schemes*.* The Committee noted that the Pensions Regulator issued a regulatory intervention report in relation to the GKN PLC Pension Schemes to highlight to trustees, employers and advisers how it expects to work with parties where there is a takeover or acquisition and a defined benefit pension scheme involved. The meeting noted the report states that in situations where a transaction is likely to have a significant impact on the employer’s ability to support a DB pension scheme.

The Chairman reported the Pensions Regulator is likely to communicate with involved parties to ensure that appropriate steps are taken to understand and mitigate any material detriment to the scheme, with the aim of protecting members’ benefits. The meeting also noted that the report states that the Pensions Regulator expects to be notified as soon as practicably possible about any potential transaction affecting a company or group that has a DB pension scheme attached.

* + 1. HMRC consultation on protecting certain taxes in insolvency. The Committee noted that on 26 February 2019, HM Revenue & Customs published a consultation on the Government's proposal to make HMRC a secondary preferential creditor for certain tax debts paid by employees and customers, including VAT, PAYE and Employee NICs. The Chairman reported the new rules will come into force for insolvencies that commence from 6 April 2020. It was noted that the CLLS Insolvency Law Committee had submitted a response to this consultation, which closes on 27 May 2019.
  1. **Cases**

The Committee noted the following cases:

* + 1. Vedanta Resources PLC and another v Lungowe and others [2019] UKSC 20. This Supreme Court decision relates to the jurisdiction of the English courts to determine certain claims by Zambian citizens against Vedanta (a UK plc) and one of its Zambian-incorporated subsidiaries which owns the Nchanga Copper Mine in Zambia that arise from alleged toxic emissions from the mine. Amongst other things, the Supreme Court had to consider whether the claimants' pleaded case (that Vedanta owed a common law duty of care to the claimants as a result of the activities of its subsidiary) disclosed no real triable issue against Vedanta – the key question being whether Vedanta had sufficiently intervened in the management of the mine to have assumed a duty of care to the claimants. The Supreme Court confirmed the view of the Court of Appeal in *AAA v Unilever plc [2018] EWCA Civ 1532* that the liability of parent companies in relation to the activities of their subsidiaries is not, of itself, a distinct category of liability in common law negligence – ordinary, general principles of the law of tort regarding the imposition of a duty of care apply. However, the Supreme Court held that it would be reluctant to seek to shoehorn all cases where a parent might incur a duty of care to third parties harmed by the activities of its subsidiary into the two basic types referred to by the Court of Appeal in *AAA v Unilever plc*, stating that "there is no limit to the models of management and control which may be put in place within a multinational group of companies". Based on Vedanta's published materials about its assumption of responsibility for the maintenance of proper standards of environmental control over its subsidiaries' activities and the implementation of those standards through training, monitoring and enforcement, the Supreme Court held that the claimants' case was arguable. Due to the decisions on the other issues, this case may proceed to trial.
    2. Oversea-Chinese Banking Corporation Limited v ING Bank N.V. [2019] EWHC 676 (Comm). A seller warranted in a share purchase agreement that a company's accounts gave a true and fair view of the state of affairs of the company. The warranted accounts did not show a potential liability of the company. The buyer claimed the full amount of that liability for breach of the accounts warranty (rather than damages based on the diminution of the value of the shares), arguing that it would have sought an indemnity in respect of that liability had it been disclosed in the accounts and had there been no breach of the accounts warranty. The High Court held that, on a claim for breach of warranty of quality on a share sale, the measure of damages is the diminution of the value of the shares and not the amount which could have been claimed under a hypothetical indemnity that would have been negotiated had the accounts included provision for the potential liability. The High Court also held that there was, in fact, no breach of the accounts warranty.
    3. Peter David Schofield v Christopher Stephen Jones [2019] EWHC 803 (Ch)*.* The High Court granted relief under section 306 CA 2006 to enable a general meeting of a company to be held for the purposes of removing a director with a quorum of one member, despite general meetings of the company requiring a quorum of two qualifying persons pursuant to section 318(2) CA 2006. The company had a minority shareholder (Mr Christopher Jones) and majority shareholder (Mr David Schofield), each a director, along with two other directors. Upon written request from David Schofield, the company convened a general meeting to consider a resolution to remove Christopher Jones as a director. Christopher Jones declined to attend, and the meeting was inquorate. The High Court held that the statutory policy that shareholders should be able to remove a director by ordinary resolution, reflected in section 168 CA 2006, must be afforded considerable weight when determining whether to grant relief under section 306 CA 2006 to enable a meeting to be called for the purposes of removing a director. The High Court also held that the existence of concurrent unfair prejudice proceedings under section 994 CA 2006 is not necessarily a bar to the grant of an order under section 306 CA 2006 – it is merely a factor to be weighed in the balance. The Committee agreed that this was a sensible decision, based on its facts, as the ability of a minority shareholder to frustrate the process of his removal as a director needed to be resolved.
    4. Re Steris plc [2019] EWHC 751 (Ch). The High Court determined whether to sanction a scheme of arrangement under Part 26 CA 2006 and confirm an associated capital reduction. The scheme involved redomiciling the parent company, Steris plc, to the Republic of Ireland by inserting a new parent company incorporated in the Republic of Ireland to mitigate against any negative Brexit impact on the business. Steris plc had in issue ordinary share capital (to which the cancellation scheme would apply) and redeemable preference shares (to which the cancellation scheme would not apply; but which would be redeemed following completion of the scheme). The High Court considered the prohibition on the use of cancellation schemes of arrangement in section 641(2A) CA 2006 and the exemption to the prohibition in section 641(2B) CA 2006. Despite the preference shares not being part of the scheme, the High Court concluded that the scheme fell within the exemption in section 641(2B) CA 2006 because: (i) the preference shareholder represented a very small proportion of the members of Steris plc so substantially all of the members of Steris plc would become members of the new parent company; and (ii) section 641(2B)(c) CA 2006 focuses on the effect of the scheme upon equity share capital and the ordinary shareholders in Steris plc would hold ordinary shares in the new parent company in the same proportions as they hold ordinary shares in Steris plc.
  1. **Any other business**

The Chairman informed the Committee about the AGMs of both the CLLS and the City of London Solicitors' Company, both of which are to be held on 17 June. Members were asked to contact the Secretary if they would like any further information about these meetings.

13 August 2019