THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 301st meeting
at 9:00 a.m. on 29th January 2020
at Clifford Chance LLP, 10 Upper Bank Street, London E14 5JJ

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1. **Welcome and apologies**

**Attending**: James Bole (alternate), John Adebiyi, Sam Bagot, Adam Bogdanor, Lucy Fergusson (Acting Chair), Nicholas Holmes, Chris Horton, Victoria Kershaw (alternate), Vanessa Knapp, Stephen Mathews, Raj Panasar (alternate), Jon Perry, Caroline Rae, Patrick Sarch, Richard Spedding, Patrick Speller, Liz Wall, Martin Webster, Victoria Younghusband and Kath Roberts (Secretary).

**Apologies**: David Pudge, Mark Austin, Robert Boyle, Murray Cox and Richard Ufland.

The Chair introduced Edward Craft, Chair of The Law Society Company Law Committee who was attending at the invite of the Chair, following their earlier discussions about how the two Committees should continue to focus on working together on matters of shared interest.

2. **Approval of minutes**

The Chair reported that a draft version of the minutes of the meeting held on 27 November 2019 was circulated to members on 12 December 2019.

3. **Matters arising**

3.1 National Security and Investment Bill. The Chair reported that on 19 December 2019, the Queen's Speech set out the Government's proposed legislation for the new parliamentary session, including a National Security and Investment Bill, the purpose of which is to strengthen the Government's powers to scrutinise and intervene in business transactions (takeovers and mergers) to protect national security and provide businesses and investors with the certainty and transparency they need to do business in the UK. It was noted that this Bill follows the BEIS consultation on National Security and Investment published in July 2018 to which a working group of the Committee and The Law Society Company Law Committee, led by Simon Jay (latterly of the Committee), submitted a joint response. The Chair reported that David Pudge had asked if Sam Bagot could please take this matter forward when the text of the Bill is published.

3.2 FCA Quarterly Consultation Paper No. 25. The Chair reported that on 13 December 2019, the FCA published Handbook Notice No 72 and the Listing Rules and Disclosure Guidance and Transparency Rules (Miscellaneous Amendments No 2)

Instrument 2019. The Committee noted that following a consultation in the FCA Quarterly Consultation Paper No. 25, this instrument makes changes to the FCA Handbook to update references to the UK Corporate Governance Code 2018 and to introduce a new rule to the Disclosure Guidance and Transparency Rules to ensure that the requirements for annual corporate reporting in the European Single Electronic Format are implemented in the UK as required by EU law. It was noted that this instrument came into force on 13 December 2019 and the Handbook Notice contained feedback on the consultation.

3.3 EU regulation amending MAR and the Prospectus Regulation. The Committee noted that on 11 December 2019, the EU regulation amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets was published in the Official Journal of the European Union. The Chair reported that this regulation entered into force on, and applies from, 31 December 2019, other than the changes to MAR which apply from 1 January 2021. Given that the implementation date of the regulation falls after the Brexit transitional period (which ends on 31 December 2020), the Committee considered it unlikely that the UK would implement the MAR changes on that date, as implementation will require changes to primary legislation and is not within the FCA's powers.

3.4 New EU company law to help companies move across borders. The Chair reported that on 12 December 2019, the directive amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions was published in the Official Journal of the European Union. It was also reported that this directive entered into force on 1 January 2020 and that Member States must implement it by 31 January 2023. Given that the implementation date falls after the Brexit transitional period (which ends on 31 December 2020), the Committee considered it unlikely that the UK would implement this directive.

3.5 Risk Coalition principles and guidance for board risk committees in the financial services sector. The Committee noted that on 4 December 2019, the Risk Coalition published its principles-based guidance for board risk committees and risk functions in the UK Financial Services sector.

3.6 ESMA consults on MAR review. The Chair reported that on 29 November 2019, the MAR Working Group, led by Nicholas Holmes, submitted its response to the ESMA consultation paper on MAR.

3.7 FCA Quarterly Consultation Paper No. 26. The Committee noted that on 6 January 2020, the Joint Prospectus and Listing Rules Working Group, led by Richard Ufland, submitted its response to Chapters 3 and 8 of FCA Quarterly Consultation Paper No. 26. The response indicated the Committee's support for the FCA's proposed changes set out in Chapters 3 and 8 and welcomed the FCA's proposed amendment to the Listing Rule 13 requirements relating to 'documents on display' which would reverse one of the changes introduced in July 2019 so that, in relation to class 1 transactions, the relevant sale and purchase agreement need only be made available in hard copy and not online.

One Committee member noted that, pending this amendment taking effect, his firm's experience was that the FCA was still requiring relevant sale and purchase agreements

to be made available online, although the FCA would allow redaction of sensitive information and for the document to be put behind a firewall.

It was also noted that a further discussion of the working group was still to be held in relation to the Chapter 4 of this consultation in which the FCA is proposing an amendment to the Listing Rules to require issuers with securities listed in the UK to publish, and keep publicly available, information about the rights attaching to a company's securities. It was noted that this response did not need to be submitted until 6 February 2020. The Committee discussed whether, in the context of the FCA's proposals in Chapter 4, it should consider developing standard language for companies to use to describe their share rights in circumstances where they do not have a recent prospectus setting out this information. The Secretary agreed to raise this with Richard Ufland who chairs the working group.

4. **Discussions**

4.1 Brydon review into UK audit standards. The Chair reported that on 18 December 2019, BEIS published the final report of the independent review into the quality and effectiveness of audit and a list of recommendations. The Chair noted that the review, led by Sir Donald Brydon, examines and makes recommendations on the purpose, scope and quality of audit, and any changes that may need to be made to it so it meets the needs of users of accounts and so that it better serves the public interest. It was also reported that the final report makes 64 recommendations, aimed primarily at the audit of Public Interest Entities in accordance with the review's terms of reference.

Key recommendations include the establishment of a separate new audit profession, to be overseen by the Audit, Reporting and Governance Authority, a new statutory definition of the purpose of audit, auditor "vetting" of section 172 statements, additional reporting requirements for directors and increased shareholder and employee engagement in audit. The Committee noted that in terms of next steps, the Government will consult on the recommendations before taking any further action although there does not appear to be any certainty around the timing of any such consultation.

It was reported that the FRC was trying to implement many of the recommendations in the Kingman and Brydon reports where primary legislation was not required to do so.

The Committee noted that the new head of the FRC, Sir Jon Thompson had stated that he was not in favour of joint audits (a recommendation of the CMA review into the audit market). It was noted that Sir Donald Brydon had also indicated that he was not an advocate for joint audits.

The Committee was uncertain as to whether any future White Paper would adopt a holistic look at the Kingman, CMA and Brydon recommendations. One alternative, as seen with the Small Business Enterprise and Employment Bill in 2014, might be the publication of a bill with wide general powers, to the followed by further consultation(s) on the detail of the proposals.

The Committee discussed the question of "assurance" to be provided by the audit profession under the Brydon proposals. In particular, it was noted that the report

envisaged that audit assurance would extend beyond an audit of the financials, to cover areas such as ESG and cyber assurance. This would involve a significant shift in the current audit market.

The Committee agreed it would be sensible to contact BEIS to offer to meet with them in advance of the publication by them of any further consultation to discuss potential concerns.

4.2 Expansion of the Trust Registration Service. The Chair reported that the Fourth Anti-Money Laundering Directive placed a requirement on the UK to create a register for all express trusts that incur a UK tax consequence. It was noted that as a result, HMRC set up the Trust Registration Service (**TRS**) in 2017. It was noted that the Fifth Anti-Money Laundering Directive (**5MLD**), which was required to be implemented by Member States by 10 January 2020, expanded the scope of this register by requiring trustees or agents of all UK (and some non-EU resident) express trusts to register those trusts, and their beneficial owners, with the TRS (irrespective of the tax consequences).

The Committed noted that HM Treasury consulted on the transposition of 5MLD last year and the regulations (set out in item 5.8(b) below) were made on 19 December 2019 to implement the changes made by 5MLD but that these regulations do not implement the changes to the TRS and that the HM Treasury consultation stated that a more detailed technical consultation on the details of the implementation of the TRS expansion would be published later in 2019.

The Chair reported that on 27 January 2020 HM Treasury published its consultation on the expansion of the TRS and that a link to the consultation paper had been circulated to the Committee as an additional agenda item. It was reported that the consultation included (at Appendix A) draft regulations to amend the 2017 regulations in relation to the central register of the beneficial ownership of trusts, and that feedback is requested on whether the draft regulations adequately reflect 5MLD in terms of the scope of registration, the information to be collected and the framework for making data sharing requests. It was noted that the timetable for responding to the consultation is tight as it closes on 21 February 2020 and that the Chairman of the Committee had asked for a volunteer to lead the response.

The Committee noted the potentially onerous nature of the proposed trust registration requirements and the disproportionate effect of them on English law transactions, given the many legal arrangements that take the form of trusts which in other jurisdictions, would usually be achieved by way of contractual or other means. The Committee was concerned about the need for proportionality given that many such trusts present a low risk of being manipulated for money laundering and terrorist financing purposes. Whilst it was noted that HMT had proposed some limited exemptions from the trust registration requirements (particularly in relation to loans and bonds), it was thought that some of the exemptions could be more comprehensive and that there were other areas in a financial and/or commercial context where additional exemptions would be justified.

It was reported that The Law Society Tax Law Committee was intending to prepare a response to the consultation and that The Law Society Company Law Committee would be giving consideration to whether it should feed into that response. In the

meantime, any firm able to lead a response from the Committee was asked to contact the Secretary after the meeting.

4.3 *Data trusts.* It was agreed to hold this item over to the following meeting.

4.4 *Brexit.* The Chair reported that she had seen agreements which included a general provision on interpretation stating that during the transition period EU law continues to apply in the UK. Whilst helpful, the Committee did not think that it was necessary to include any such provision as the European Union (Withdrawal Agreement) Act 2020 (**WAA**) amends the European Union (Withdrawal) Act 2018 to enable both (i) EU law to continue to apply in the UK during the transition period, and (ii) EU-related terms in UK legislation to operate effectively during the transition period, by setting out rules about how various references (e.g. the EU, the EEA or member state) are to be read. The Committee noted however that there is no legislation with similar savings provisions for references to terms such as EU and EEA in private agreements and, as such, the drafting in private agreements should specifically address the position of the UK during the transition period (and beyond).

The Committee discussed the position of third countries and how they will treat the provisions of the WAA, in particular, those that state that the UK will continue to be a party to and bound by the provisions of international agreements between the EU and relevant third countries. Whilst the EU has notified all such third countries of the provisions of the WAA, as a matter of law, they will not be bound by such provisions and, even in circumstances where they choose to act in a way that indicates that they consider the UK to be so bound, there may be provisions of their domestic legislation which might give rise to problems on any enforcement matter.

It was noted that the WAA also defers the effects of the no-deal statutory instruments (SIs) made prior to exit day in order that the UK law does not diverge from EU law during the transition period. Under the WAA, the SIs will now come into force by reference to an "IP completion day" (defined to align with the end of the transition period) rather than by reference to exit day.

In light of the above, one Committee member had raised a concern with the Takeover Panel as to when Panel Instrument 2019/3 (which makes the Brexit amendments to the Takeover Code) would take effect as it currently refers to the amendments coming into effect on exit day. The Panel have since published confirmation on their website stating that "*Following the UK's withdrawal from the EU, certain amendments will be made to Part 28 of the Act by The Takeovers (Amendment) (EU Exit) Regulations 2019 (the "Takeover Regulations"). The Takeover Regulations will come into force on "IP completion day", i.e. 31 December 2020 at 11.00 pm.*

*Although the Takeover Regulations are stated to come into force on "exit day", which is defined in the European Union (Withdrawal) Act 2018 as 31 January 2020 at 11.00 pm, Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (the "EUWAA 2020") provides that references in existing subordinate legislation to "exit day" are to be read as references to "IP completion day". "IP completion day" is defined as the end of the implementation period provided for in the Withdrawal Agreement between the EU and the UK, i.e. 31 December 2020 at 11.00 pm."*

## 5. Recent developments

### 5.1 Company law

(a) See item 5.8(b).

### 5.2 Corporate governance

(a) FRC Annual Review of the UK Corporate Governance Code. The Chair reported that on 9 January 2020, the FRC published a press release announcing the publication of its Annual Review of the UK Corporate Governance Code. It was also reported that the Annual Review assesses corporate governance in the UK by considering the quality of reporting against the 2016 UK Corporate Governance Code and comments on any "early adoption" by FTSE 100 companies of the 2018 UK Corporate Governance Code (**2018 Code**). The Committee noted that in commenting on "early adoption", the FRC sets out its expectations for companies reporting on the 2018 Code, including on purpose, culture, workforce engagement, section 172 reporting, chair tenures, succession planning, diversity and remuneration. It was also noted that the press release states that companies need to improve their governance practices and reporting if they are to demonstrate their positive impact on the economy and wider society.

The Committee discussed in general terms what they were seeing in terms of section 172 statement reporting and the challenges for companies of including meaningful examples of situations where the directors had been required to consider the interests of wider stakeholders in their decision-making. The Secretary referred to a paper recently published by ICAS entitled *Case studies from directors on section 172 duties: A guide to implementation* on the duty to promote the success of the company which included case studies on how directors apply their section 172 duties which are intended to illustrate good practice. The Secretary offered to circulate a link to the paper to the Committee after the meeting.

(b) QCA and UHY Hacker Young AIM Good Governance Review. The Committee noted that on 10 December 2019, the Quoted Companies Alliance (**QCA**) and UHY Hacker Young issued a press release announcing the publication of a new report entitled AIM Good Governance Review 2019/20. It was also noted that in this report, the QCA and UHY Hacker Young have analysed the governance disclosures of 50 AIM companies in five specific areas, strategic report, stakeholder engagement, board dynamics, board expertise and succession planning.

(c) PERG 12th annual report on conformity with the Guidelines for Disclosure and Transparency in Private Equity and latest good practice reporting guide for portfolio companies. The Chair reported that on 5 December 2019, the Private Equity Reporting Group (**PERG**) issued a press release announcing the publication of its 12th annual report on conformity with the Guidelines for Disclosure and Transparency in Private Equity and the latest version of the good practice reporting guide for portfolio companies.

(d) IoD manifesto for corporate governance. The Committee noted that on 22 November 2019, the Institute of Directors (**IoD**) published a manifesto for corporate governance that proposes ten policy initiatives for the next Government after the general election. It was further noted that the ten policy initiatives are designed to achieve three broad objectives: (i) increase the accountability of the UK corporate governance system to stakeholders and wider society; (ii) improve the competence and professionalism of UK board members – whose role is central to business decision-making; and (iii) enhance the ability of board members to pursue long-term, sustainable business behaviour – including addressing the challenge of climate change.

5.3 **Reporting and disclosure**

(a) Financial Reporting Lab report on workforce-related corporate reporting. The Chair reported that on 20 January 2020, the FRC issued a press release announcing that the FRC's Financial Reporting Lab has published a report on workforce-related corporate reporting and a summary of the report which cover questions companies should ask themselves about their reporting on workforce matters. The Chair reported that the Financial Reporting Lab's report stated that reporting on workforce-related issues needs to improve to meet investor needs and reflect modern-day workforces. The Committee noted the report also provides practical guidance and examples on how companies can provide improved information to investors.

(b) BlackRock's CEO letter on sustainability. The Chair reported that on 14 January 2020, Larry Fink, CEO of BlackRock, released his annual letter to CEOs. It was noted that in this letter, Larry Fink warns of the risk that climate change presents to markets and that companies, investors and governments must prepare for a significant reallocation of capital into sustainable strategies. It was noted that BlackRock is calling for improved disclosure to enable investors to have a clearer picture of how companies are managing sustainability-related questions and that, in particular, BlackRock is asking the companies in which it invests to: (i) publish a disclosure in line with industry-specific Sustainability Accounting Standards Board guidelines by the year end; and (ii) disclose climate-related risks in line with the Task Force on Climate-related Financial Disclosure's recommendations.

5.4 **Equity capital markets**

(a) ESMA report on APMs. The Committee noted that on 20 December 2019, ESMA issued a press release announcing the publication of its report on European Union issuers' use of Alternative Performance Measures (**APMs**) and their compliance with ESMA's APM Guidelines. It was further noted that ESMA's assessment of issuers' compliance with the APM Guidelines shows that there is significant room for improvement and ESMA calls on issuers both to improve their disclosures regarding APMs and to consider the findings of their report when preparing their future communications to the market containing APMs, notably ad-hoc disclosures, financial reports and prospectuses.

(b) ESMA proposes strengthened rules to address undue short-termism in securities markets. The Chair reported that on 18 December 2019, ESMA issued a press release announcing the publication of its report on undue short-term pressure on corporations. It was also reported that in this report, ESMA makes recommendations to the European Commission for action in key areas such as disclosure of ESG factors and institutional investor engagement. The Committee noted that the report had been sent to the European Commission which will decide whether to initiate legislative changes to address the report's recommendations and monitor the effect of certain legislative acts to assess whether there is a need for further action.

(c) FCA Primary Market Bulletin No. 26. The Chair reported that on 17 December 2019, the FCA published Primary Market Bulletin No. 26. It was noted that in this edition, the FCA stated that it is updating a number of the technical and procedural notes in the FCA Knowledge Base to reflect changes driven by the Prospectus Regulation and that it intended to do this in stages as it needs to update around a third of the technical and procedural notes. It was also reported that this edition contains the first stage of updates which are small changes, such as updating terminology and rule references which are a direct consequence of the change of prospectus regime and which do not materially affect the substance of the guidance in the respective notes. The Committee noted that the FCA was also deleting three technical notes that are no longer relevant (incorporation by reference, risk factors and non-equity prospectuses aimed at retail investors).

(d) FCA Quarterly Consultation Paper No. 26. The Committee noted that on 6 December 2019, the FCA issued a press release announcing the publication of Quarterly Consultation Paper No. 26 (CP19/33). It was also noted that the proposed changes included: (i) changes to the Listing Rules' requirements, which cross-refer to the Prospectus Regulation, for information to be put on display to remove the unintentionally introduced requirement for SPAs on Class 1 transactions to be available for inspection on the issuer's website (Chapter 3 of CP19/33); (ii) amendments to the Listing Rules to include a requirement mandating the disclosure of rights attached to the securities (Chapter 4 of CP19/33); and (iii) further Brexit-related changes to the Handbook and BTS following extension of Article 50 (which were only to come into effect if the UK left the EU without an implementation period) (Chapter 8 of CP19/33). The Committee noted the consultation closed on 6

January 2020 for Chapters 3 and 8 and that it closes on 6 February 2020 for Chapter 4. It was also noted the Joint Prospectus and Listing Rules Working Group led by Richard Ufland submitted a response to Chapters 3 and 8 on 6 January 2020 (see item 3.7 above).

(e) ESMA final report on draft RTS amending Delegated Regulation containing RTS under the Prospectus Regulation. The Chair reported that on 4 December 2019, ESMA published its final report on the draft RTS amending Delegated Regulation (EU) 2019/979 containing regulatory technical standards (**RTS**) under the Prospectus Regulation.

(f) Updated ESMA Q&As on the Prospectus Regulation. The Committee noted that on 4 December 2019, ESMA issued a press release announcing the publication of an updated version of its Q&As on the Prospectus Regulation. It was further noted that two new Q&As had been added relating to the inclusion of pro-forma summaries in base prospectuses and the application of prospectus disclosure annexes where securities do not fall neatly within a specific disclosure regime.

(g) Proxy Advisors (Shareholders' Rights) Regulations implementation. The Chair reported that on 25 November 2019, the FCA issued a press release announcing the publication of Policy Statement PS19/28 that sets out the changes the FCA is making to the Decision Procedure and Penalties manual and Enforcement Guide to reflect the changes introduced by the Proxy Advisors (Shareholders' Rights) Regulations 2019 (which came into force on 10 June 2019 and give effect to those parts of SRD II which apply to proxy advisors). The Committee noted that these regulations established a new regulatory framework for proxy advisors and required them to provide a range of information to their clients and the public to promote greater transparency and that they gave the FCA powers to investigate and sanction proxy advisors.

5.5 **MAR**

(a) FCA fines former managing director for failure to notify personal trades. The Chair reported that on 20 December 2019, the FCA issued a press release announcing that it had fined Kevin Gorman, a former managing director at Braemar Shipping Services plc (**Braemar**), £45,000 (discounted from £64,300 due to his agreement to resolve the matter) for failure to notify personal trades in breach of Article 19(1) MAR. The Committee noted that while not a main board director, Mr Gorman was a senior employee who sat on Braemar's Executive Committee. It was also noted that Mr Gorman carried out the trades in his capacity as a PDMR at Braemar without informing the FCA or Braemar within the required three business days – although the FCA did not find that Mr Gorman traded whilst in possession of any confidential inside information. The Chair reported the fine bore relation not only to the relative seriousness of the breaches but also to Mr Gorman's salary. It was noted that the FCA also published a final notice.

(b) FCA Primary Market Bulletin No. 25. The Committee noted that on 27 November 2019, the FCA published Primary Market Bulletin No. 25. It was noted that in this edition, the FCA consulted on a best practice note for

government departments, industry regulators and public bodies on identifying, controlling and disclosing inside information. The Chair reported that the FCA also provided information on firms' obligations around "cold-shouldering" and the provisions of MAR 4.3. It was noted that the consultation closed on 15 January 2020.

5.6 **Accounting**

(a) Updated FRC audit quality practice aid for audit committees. The Committee noted that on 19 December 2019, the FRC issued a press release announcing that it had issued an update of its practice aid to assist audit committees in evaluating audit quality in their assessment of the effectiveness of the external audit process. It was also noted that the update took account of developments since the first edition was issued in 2015, including revisions to the UK Corporate Governance Code, the requirement for all Public Interest Entities to conduct a tender at least every 10 years and rotate auditors after at least 20 years, and increasing focus generally on audit quality and the role of the audit committee. The Chair reported that it also took account of commentary from audit committees suggesting how the practice aid could be more practical in focus and more clearly presented.

(b) Major revision to FRC's Ethical Standard and Auditing Standards. The Chair reported that on 17 December 2019, the FRC issued a press release stating that it had issued a major revision to its Ethical Standard and revised Auditing Standards in order to support the delivery of high-quality audit in the UK. It was also reported that the press release stated that the changes will help to strengthen auditor independence, prevent conflicts of interest and ensure the UK is seen as a destination to do business, because of stronger investor protection resulting from high-quality audit.

5.7 **Takeovers**

(a) See item 4.2.

5.8 **Miscellaneous**

(a) Pensions (Amendment) Bill. The Chair reported that on 16 January 2020, the Pensions (Amendment) Bill (a Private Members' Bill) had its first reading in the House of Lords. It was also reported that this Bill proposed to amend the Companies Act 2006 (**CA 2006**) by inserting a new requirement for a public company to receive written approval of the trustees of any pension scheme responsible for the pensions of current or former employees of the company and the Pensions Regulator before making a distribution.

The Committee also noted that the Queen's Speech, given on 14 October 2019, announced the introduction of a new Pensions Bill which, amongst other matters, would create a new criminal offence to punish those found to have committed wilful or grossly reckless behaviour in relation to a pension scheme.

(b) The Money Laundering and Terrorist Financing (Amendment) Regulations 2019. The Chair reported that on 20 December 2019, the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 and explanatory memorandum were published. It was noted that these regulations update the UK's existing anti-money laundering legislation to implement changes made by 5MLD. They create new requirements on relevant persons to: (i) check beneficial ownership registers of legal entities in scope of the PSC requirements before establishing a business relationship; and (ii) report to Companies House any discrepancies between the beneficial ownership information on the registers and the information which is made available to them when carrying out customer due diligence. The Committee noted that there is a legal professional privilege exception and that these regulations require Companies House to take appropriate actions to investigate and, if necessary, resolve any discrepancy in a timely manner. It was also noted that the CA 2006 had been amended to provide that Companies House can rectify the register to resolve any discrepancy. It was noted that these provisions came into force on 10 January 2020 and that, on the same date, Companies House published guidance on reporting a discrepancy about a beneficial owner on the PSC register by an obliged entity.

5.9 **Cases**

The Committee noted the following cases:

(a) (1) Henry George Dickinson (2) Judith Yap Dickinson v (1) NAL Realisations (Staffordshire) Limited (2) Kevin John Hellard & Gerald Krasner [2019] EWCA Civ 2146. In relation to share buybacks, the Court of Appeal held that the law is clear that payment for the shares must be made when the purchase is effected and that it is not enough that a contract provides for payment forthwith – payment must in fact be made. In this case, the purchase price was left outstanding on loan account at completion, which the Court of Appeal (agreeing with the High Court) held did not satisfy the statutory requirement that shares must be paid for on purchase. However, it is interesting to note the Court of Appeal's comments on Park J's decision in *BDG Roof-Bond Ltd v Douglas* (to which the court had been referred) which indicate that payment need not necessarily be in money.

(b) Standish and others v (1) The Royal Bank of Scotland Plc (2) SIG Number 2 Ltd (formerly West Register Number 2 Ltd) [2019] EWHC 3116 (Ch). The High Court, following previous decisions, held that section 170 CA 2006 did not impose the full range of fiduciary duties owed by a director on a shadow director. The extent of any fiduciary duty owed by a shadow director would reflect the extent and nature of the instructions that he gave (in accordance with which the directors are accustomed to act). Therefore, fiduciary duties may be owed across the entire range of the company's activities where instructions extend over the full range of the directors' decision-making or may be limited where the extent and nature of the instructions are limited. Where there is no link between an instruction and the event in respect of which a fiduciary duty is said to be breached, a shadow director would not be liable merely by reason of his status as such. In this case, there was no link

between the instructions of the shadow director and the alleged breaches of duty.

(c) Re Inmarsat plc [2019] EWHC 3470 (Ch). The High Court considered whether to sanction a scheme of arrangement under Part 26 CA 2006 between Inmarsat plc and its members. At the court sanction stage, objections were raised, including that: (i) there had been insufficient disclosure in the explanatory statement in relation to an important commercial contract; (ii) Inmarsat's directors should have sought further consideration for the scheme in the form of a contingent value right relating to that contract; and (iii) there had been a material change of circumstance after the scheme meeting, but before the sanction hearing, principally in relation to developments which could affect the value of that contract. Although the objectors ultimately withdrew their allegations prior to the sanction hearing after the bidder made "no increase" and "no extension" statements, the court proceeded to consider them at the hearing. The court found that: (i) the explanatory statement had been clear, fair and sufficient; (ii) the key question before the court was whether the scheme as such was one which might reasonably be approved by an honest and intelligent shareholder – it was not the role of the court to determine whether the deal was the best deal or could have been improved upon; (iii) the change of circumstances which the objectors had relied upon had been press speculation – allegations of a material change of circumstances should usually be based on more substantial grounds than press speculation; and (iv) there was no blot on the scheme. The court proceeded to sanction the scheme.

(d) Re Smith & Williamson Holdings Limited [2019] EWHC 3021 (Ch). The High Court ordered that a single meeting of the company's shareholders be convened to consider and approve a scheme of arrangement under Part 26 CA 2006. The company had raised class issues before the High Court to seek a provisional view at the convening stage that its approach to class constitution was appropriate in circumstances where there were potential issues arising out of matters, including: (i) the mix and match facility (specifically that the facility would not be available to shareholders who held a holding worth less than £45,000); and (ii) the alteration of existing bad leaver provisions (under which a "bad leaver" could be required to transfer their new shares (i.e. the new ordinary and/or new preference shares they would be entitled to under the mix and match facility) at a discount). The court highlighted that differences in rights could be material without leading to different classes. The fact that the mix and match facility was not available to shareholders who would not be entitled to consideration in excess of £45,000 did not mean that the shareholders could not consult together because they had different rights. Rather, the difference was in relation to the enjoyment of the rights attaching to the shares rather than the rights themselves. In relation to the bad leaver provisions, the new arrangements were intended to reflect the existing position under the current leaver arrangements, and were similar albeit not identical. The existing rights and new rights were not sufficiently different as to create a class issue.

6. **Any other business**

6.1 ShareGift. The Chair reminded Committee members of the existence of ShareGift, a share donation charity that works with public companies and their shareholders and specialises in releasing value from small shareholdings to generate money for many charities. Members were directed to ShareGift's website, http://www.sharegift.org/ for further information.

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