THE CITY OF LONDON LAW SOCIETY
COMPANY LAW COMMITTEE

Minutes

for the 305th meeting
at 9:00 a.m. on 30th September 2020

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1. **Welcome and apologies**

In attendance: David Pudge (Chairman), John Adebayi, Sam Bagot, Adam Bogdanor, Edward Baker Robert Boyle, Nicholas Holmes, Chris Horton, Jon Perry, Caroline Rae, Wilma Rix (alternate), Patrick Sarch, Richard Spedding, Patrick Speller, Liz Wall, Martin Webster, Victoria Younghusband, Vanessa Knapp, Stephen Mathews, Tom Brassington, Ros Ni Dhubhain (alternate) and Kath Roberts (Secretary)

Apologies: Lucy Fergusson, Mark Austin, Murray Cox

2. **Approval of minutes**

The Chairman reported that a draft version of the minutes of the meeting held on 22 July 2020 would be circulated to members shortly.

3. **Matters arising**

3.1 *Pre-Emption Group extends additional flexibility for equity placings.* The Chairman reported that on 4 September 2020, the Pre-Emption Group issued a press release announcing that it was extending, to 30 November 2020, its recommendation that investors, on a case-by-case basis, continue to consider supporting placings by companies of up to 20% of their issued share capital over a 12-month period.

3.2 *Companies House temporary online service for certain forms*. The Committee noted that on 23 July 2020, Companies House added certain insolvency forms to its temporary online service to upload certain forms to Companies House during the coronavirus outbreak (further insolvency documents were added on 1 September 2020). It was also noted that the service roadmap (upload a document to Companies House) webpage indicates which documents Companies House is planning to add next.

3.3 *UK national security reviews*. The Chairman reported that the Enterprise Act 2002 (Share of Supply) (Amendment) Order 2020 (see also the related explanatory memorandum) and the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2020 (see also the related explanatory memorandum) came into force on 21 July 2020. The Committee noted that these orders lower the thresholds at which the UK Government can carry out a national security review for acquisitions of targets with activities involving artificial intelligence (AI), advanced materials or cryptographic authentication. BEIS has published non-statutory guidance to accompany these orders.

The Committee also discussed the long-awaited National Security and Investments Bill. It was hoped that this will be published before the end of the year given the concern that, if the Bill is not brought forward until January 2021, a lack of Parliamentary time may mean it is rushed through Parliament with unforeseen consequences. The Chairman reported that it seems likely that Government is planning to publish the Bill as draft legislation for consultation, so efforts to influence its content will need to be through the legislative process.

The Committee noted that there is an expectation that Government will move beyond a national security test towards a public interest test for intervention and that it is likely that the Bill will seek to introduce a more mandatory-style regime, which may include the ability for Government to unwind transactions after their completion – it was noted that this was an area previously raised as a concern by the Committee with Government.

The Committee noted that ways of influencing the legislative process might include preparing draft amendments and working papers for Parliamentary committees, and getting other industry groups involved. The Committee working group, led by Sam Bagot, is ready to respond. Members of the Committee were asked to contact the Chairman and the Secretary if they would like to join this working group. The Chairman reported that he was in touch with the Law Society Company Law Committtee, the CLLS Competition Law Committee and the Financial Law Committee, all of which were likely to want to express views on relevant issues.

3.4 *FCA Consultation Paper CP20/3*. The Committee noted that on 17 September 2020, a working group of the Committee led by Chris Horton (**CH**) held a call to finalise its response to the FCA's Consultation Paper CP20/3: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations.

CH reported that the response was to be submitted later that day as the deadline for submissions was 1 October. He also reported that the working group was a joint working group with both the Law Society Company Law Committee and the CLLS Planning and Environmental Law Committee.

CH reported that the Committee supported the application of the new disclosure requirements for commercial companies (including sovereign controlled commercial companies) in the premium listed segment, along with the inclusion of references in the new rule to the 4 recommendations and the 11 supporting recommended disclosures referred to in the TCFD's June 2017 final report.

CH also referred to concerns raised in the working group's response about potential liability for directors for statements made pursuant to the new rule. While s.463 of the Companies Act 2006 (**CA 2006**) provides a 'safe harbour' for certain disclosures made in a company's strategic report and directors' report, to the extent that the disclosures required by the proposed Listing Rule are not required by law to be in the strategic or directors' report, it is not entirely clear that the protection of s.463 would apply to them. Accordingly, it will be up to issuers to manage potential liability arising out of forward looking statements, which could be especially relevant when engaging in scenario analysis. The working group expressed a view that this would be manageable for issuers, particularly given the proposed "comply or explain" basis of the new Listing Rule, but that, moving forward, should the FCA wish to make such

disclosures mandatory, or should the scope of disclosures be widened to include broader ESG considerations, there may be a need to ask Government to look again at the scope of s.463 and consider whether it should expressly cover disclosures required by the Listing Rules. One this latter point, CH reported that at a roundtable session with the FCA which was attended by certain members of the working group, the FCA indicated its desire to make compliance with the new rule mandatory, as opposed requiring disclosure on a comply or explain basis.

4. Discussions

4.1 *FCA/CLLS Liaison Committee meeting.* Victoria Younghusband reported back to the meeting on the matters discussed with the FCA on a call with them on 27 July 2020.

Discussions were focussed on the two main issues: (i) the application of the Listing Rules where a company is undertaking a scheme of restructuring sanctioned by the court under new Part 26A CA 2006 (**Part 26A Scheme**) and (ii) reconstructions and refinancings.

4.2 *FRC's AGM review.* The Chairman referred to the written note of the call held on 7 September 2020 with the FRC and which was circulated to the Committee by the Secretary on 24 September 2020, which summarised the discussions with the FRC.

It was noted that both the FCA and BEIS had also been on the call and that the FRC had confirmed that it had spoken to a wide group of stakeholders in undertaking its review of the 2020 AGM season. The Chairman reported that there were three main areas in relation to which the FRC had sought views:

- Closed door AGMs and what concerns these have raised for investors.
- With regard to virtual/hybrid meetings, whether the technology is considered to be reliable and what competition there is in the market.
- What appetite there is amongst issuers and investors for virtual only meetings.

The Committee noted that the FRC expected to publish the outcome of its review in October and that it was likely to contain best practice guidance for how hybrid and virtual meetings should be held[1].

The Committee discussed whether the 2021 AGM season might see an increased number of companies seeking to amend their articles of association to allow for hybrid/virtual meetings. It was agreed that any company seeking to do so should make sure that it sets out clearly in the notes to the resolution the circumstances in which the directors might seek to hold either a hybrid or virtual meeting in order to reduce the risk of having the resolution voted down by shareholders. There was a brief discussion around the different forms of public statement in this regard that had been published by issuers during the course of the most recent AGM season.

[1] NB This report was published on 6 October 2020.

The Chairman reported that he had raised with David Leitch at BEIS (**DL**) the concerns around the ability of companies to hold wholly virtual meetings (absence the flexibilities provided by the Corporate Insolvency and Governance Act 2020 (**CIGA**)) as a result of the legal uncertainty existing in relation to section 311(1)(b) CA 2006 and, in particular, whether a notice of meeting is required to state a physical place of meeting. Liz Wall had since prepared a short note on this point which had been submitted to DL who had agreed to consider the issue in more detail.

The Chairman reported that he had also raised with DL the question of whether there might be a further extension of the "relevant period" under CIGA to enable companies to continue to hold meetings virtually using the flexibilities provided by that Act until 30 March 2021 and potentially beyond that date. The Committee noted that any further extension of the "relevant period" under CIGA beyond 5 April 2021 would require an amendment of CIGA itself.

The Committee agreed that it would be important to ensure that the Committee fed into any industry working group put together to look at modernising the AGM process. The Chairman confirmed that he had contacted the FRC to express the Committee's willingness to assist in any such exercise.

4.3 *BEIS consultation on corporate transparency and register reform.* The Chairman reported that on 18 September 2020, BEIS and Companies House had issued a press release announcing the publication of the Government's response to the corporate transparency and register reform consultation (see also the consultation outcome webpage). It was reported that the response sets out how the Government will take forward plans to reform Companies House and sets out a range of proposals to improve the reliability and accuracy of information on the Companies Register, including: (i) introducing compulsory identity verification for all directors, people with significant control and those filing information on behalf of a company; (ii) providing the Registrar of Companies stronger powers to query, seek evidence for, amend or remove information and to share it with law enforcement partners when certain conditions are met; (iii) improving the processes for removing personal information from the register; and (iv) proposing further consultation on how to introduce full digital tagging of accounts to ensure consistency, easier identification and comparability of information on the register.

The Committee noted that the response states that many of the reforms will require legislation to implement but that, ahead of any legislation, the Government intends to publish a comprehensive set of proposals that will set out in detail how it thinks the reforms should be implemented. It was also noted that subject to the views received, it will then proceed to legislate where necessary when Parliamentary time allows.

The Chairman reported that a number of the proposals that Committee did not support are not being taken forward by the Government and that this was to be welcomed. These included (i) the requirement to verify the identity of shareholders; (ii) the requirement for companies to file full details of their bank accounts with Companies House; (iii) the requirement to evidence entitlement to use an address as the registered office - the Government could not identify a solution that could be implemented that would not be disproportionate; and (iv) the proposal that number of directorships per individual should be capped.

The Chairman reported that he was speaking to the Law Society Company Law Committee to ensure that the two Committees were joined up in their approach to any further consultation on this issue – although it was noted that each Committee would be likely to make a separate submission. The Chairman asked members to let him and the Secretary know if they would like to join the existing working group that looked at the initial proposals.

The Chairman also reported that following the publication of this response, Companies House had updated its 'Search the Companies House register' guidance to announce that it has stopped removing dissolved records from the Companies House Service (**CHS**) with immediate effect and that it will put the records of all companies dissolved since 2010 back onto CHS from January 2021.

4.4 *Ofgem fines SSE.* The Chairman reported that on 3 September 2020, Ofgem had issued a press release announcing a final notice in which it fined SSE £2 million for not announcing a potential transaction with National Grid, which would save three units at Fiddlers Ferry power station (which it had previously stated it would close) at the time of entering into heads of terms. Ofgem found that SSE failed to publish, in a timely manner, information about the future availability of its generation capacity which was likely to have had a significant effect on forward wholesale electricity prices. The Committee noted that Ofgem found that SSE breached legal requirements on the publication of inside information because it made the wrong decision about whether it was in possession of inside information. It was also noted that whilst the fine had been issued by Ofgem under the Regulation on Wholesale Energy Market Integrity and Transparency (**REMIT**) in relation to wholesale energy prices, rather than by the FCA under MAR in relation to share prices, there are clear similarities between the regimes. Under REMIT, 'inside information' is information which is likely to significantly affect the price of wholesale energy and market participants must publish inside information in an 'effective and timely' manner. The Committee agreed that this fine serves as a reminder for companies to be mindful of public statements that they have previously made to the market and whether the information being considered might contradict, or have a material impact on, that earlier statement when assessing whether inside information exists.

4.5 *High Court decision on straddling director appointments.* The Committee discussed the recent High Court decision in Everest Alliance Limited v Dr Pavel Maslovskiy and others [2020] EWHC 2035 (Ch) (also referred to at item 5.9(d) below).

4.6 *Flexibilities in CIGA regarding holding of AGMs extended*. The Committee noted that on 24 September 2020, the Government had announced that it is extending certain measures introduced by the Corporate Insolvency and Governance Act 2020 which enable companies that are required to hold general meetings to benefit from the flexibility to hold these meetings virtually until 30 December 2020.

4.7 *New technical note on prospectus requirements for schemes of arrangement.* The Chairman reported that in Primary Market Bulletin Issue No. 30 (see item 5.4(c) below), the FCA states that it is consulting on a new technical note on prospectus requirements for schemes of arrangement.

It was reported that in contrast to the generally held market view that a prospectus is not required where there is a mix and match facility on a scheme, the FCA has

expressed an opposing view in the draft technical note. The Committee noted that the Takeovers Joint Working Group is responding to this consultation (the deadline is 30 September 2020) to object to the FCA's view.

4.8 *Brexit.* The Chairman reported that Andrew Death from BEIS would be attending the November Committee meeting to provide an update of the Government's planning for the end of the Brexit transition period on 31 December 2020. Members were asked to submit any questions that they might like Andrew to address to the Secretary ahead of that meeting.

4.9 *ESMA review of the Market Abuse Regulation*. It was noted that, since circulation of the meeting agenda, ESMA had published its review of the Market Abuse Regulation on 24 September 2020. The Chairman reported that the Secretary had been in touch with members of the Committee who were part of the CLLS/FCA Liaison Committee group to set up a date for a meeting with the FCA at which this review would be discussed. As such, the Committee agreed to hold this item over for discussion at the November Committee meeting.

4.10 *Expansion of the Trust Registration Service.* The Chairman reported that the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (**2020 Regulations**) were made on 15 September 2020 and that the regulations provide for the expansion of the Trust Registration Service by amending the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (**MLRs**) to include new regulation 45ZA which requires trustees of certain trusts, which are not exempt pursuant to new Schedule 3A, to register information about the beneficial owners of the trust with HMRC.

The Chairman reported that regulation 44 of the MLRs requires trustees of 'relevant trusts' to maintain accurate and up-to-date written records of all beneficial owners of the trust and provide such records on request to any law enforcement body before the end of any reasonable period specified by such body. It was reported that the definition of 'relevant trust' for the purposes of regulation 44 has been amended by the 2020 Regulations to include certain 'non-UK trusts' that are not exempt pursuant to new Schedule 3A from the new trust registration requirements set in regulation 45ZA. However, 'UK trusts', whether they are exempt or not from the new trust registration requirements, are still caught by regulation 44. It was noted that this means a UK trust could be exempt from the trust registration requirement under regulation 45ZA (because it is a trust listed in new Schedule 3A), but the trustees would still be required to keep written records of the beneficial owners of the trust under regulation 44.

The Chairman reported that a beneficial owner does not just mean the beneficiaries of the trust but can also require a PSC regime analysis and subsidiary undertaking analysis (see regulations 5 and 6 MLRs). It was noted that the penalties for non compliance with regulation 44 are both civil (fines and public censure) and criminal (summary conviction: 3 months in prison or a fine or both; conviction on indictment: 2 years in prison or a fine or both).

The Chairman stated that he would be keen to obtain the Committee's views on how best to deal with the requirements of regulation 44 in the context of corporate transactions where, for example, a trust may arise on an asset deal to deal with assets

being in the wrong hands on or after completion, on a group reorganisation where the declaration of trust route is used to avoid the registration gap or on a share sale in respect of the shares sold which are held on bare trust for the buyer and the irrevocable PoA contains trust language. Whilst these are all incidental trusts and so should be exempt from the trust registration requirements, where these trusts have UK trustees, regulation 44 will apply(e.g. the seller of an asset purchase agreement could be a UK incorporated company)in which case trusts arising under that agreement would be caught.

Time did not allow for the Committee to discuss this issue in detail. Accordingly, the Chairman agreed to circulate an email to the Committee following the meeting to seek views on this point and, in particular, whether this issue might be addressed by the inclusion of provisions in transaction documents to ensure that if the trustee needs to provide information to a law enforcement entity, the trustee has a right to request this information from the counterparty e.g. to request any information in order to comply with any law or a narrower version that is specific to complying with regulation 44.

5. Recent developments

The Committee noted the following additional items in sections 5 and 6 below which were set out in the agenda but which time did not allow them to consider.

5.1 Company law

(a) *Updated ICSA guidance on directors' duties.* On 25 August 2020, the Chartered Governance Institute issued a press release announcing the publication of updated practical guidance for directors on their general duties under the Companies Act 2006 (**CA 2006**), which includes an additional section on the new section 172 reporting requirement. The guidance has been produced primarily for quoted public companies that are looking to provide directors with practical guidance on their general duties under the CA 2006, however, much of the note can also be applied to private companies. The guidance can be downloaded for free by members or 'free subscribers' from this webpage.

(b) *Companies House to resume the compulsory and voluntary strike off process.* On 10 August 2020, Companies House issued a press release announcing that, from 10 October 2020, it will resume the process to strike off companies it believes are no longer carrying on business or in operation (which it had temporarily suspended due to the coronavirus pandemic). On 10 September 2020, Companies House issued a press release announcing that the temporary measures to suspend voluntary strike off action would be lifted from 10 September 2020. The coronavirus guidance for Companies House customers has been updated to reflect these developments.

5.2 Corporate governance

(a) No items to consider.

5.3 **Reporting and disclosure**

(a) *FRC call for participants in new Lab project: reporting on risks, uncertainties and scenarios.* On 10 September 2020, the FRC's Financial Reporting Lab (**Lab**) issued a press release inviting investors and companies to participate in a new project on corporate disclosures on risks, uncertainties and scenarios. The scope of the project is likely to, amongst other things: (i) explore whether and how companies' risk identification, risk management and scenario planning processes are evolving and how this is impacting reporting and disclosure; (ii) consider how companies communicate uncertainty in their disclosures; (iii) discuss which areas of reporting are most challenging for companies; (iv) explore examples of risks and related disclosures where investor focus has been heightened by the current pandemic; (v) analyse how investors use this information in their decision-making process and identify whether reporting meets investor needs; and (vi) highlight best practice in current company reporting. The Lab invites investors and companies to communicate their interest in participating by emailing FinancialReportingLab@frc.org.uk (however, views are welcomed from other interested parties). The Lab expects to publish a range of outputs across 2021.

(b) *FRC review of financial reporting effects of Covid-19.* On 21 July 2020, the FRC issued a press release announcing the publication of a report following completion of its first thematic review of company reporting since the onset of the Covid-19 pandemic. The report summarises the key findings of the review of the financial reporting effects of Covid-19 for a sample of interim and annual reports and accounts with a March period end. The review found that although companies provided sufficient information to enable a user to understand the impact Covid-19 had on their performance, position and future prospects, some (particularly interim reports) would have benefited from more extensive disclosure.

5.4 **Equity capital markets**

(a) *Prospectus Regulation.* On 14 September 2020, Commission Delegated Regulation (EU) 2020/1272 amending and correcting Delegated Regulation (EU) 2019/979 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus and the notification portal and Commission Delegated Regulation (EU) 2020/1273 amending and correcting Delegated Regulation (EU) 2019/980 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market were published in the Official Journal of the European Union. These regulations are in substantially the same form as the draft regulations published by the Commission in June 2020.

(b) *FCA Market Watch 65.* On 7 September 2020, the FCA issued Market Watch 65. In this edition, the FCA: (i) discusses how inappropriate handling of

information requirements issued by the FCA can hinder, or even compromise, its preliminary reviews of, and investigations into, suspected market abuse; (ii) reminds market participants that material that could be subject to legal professional privilege should not be included in suspicious transaction and order reports or market observations submitted to the FCA and, if it is, participants run the risk that any claimed legal privilege may be regarded as waived or lost; and (iii) shares some observations on transaction reporting, following previous Market Watch newsletters on this topic.

(c) *PMB No. 30.* On 19 August 2020, the FCA published Primary Market Bulletin Issue No. 30. In this edition the FCA: (i) gives a reminder on the importance of the PDMR regime under MAR; (ii) gives updates on recent changes to the Prospectus Regulation and comments on the prospectus requirements for Global Depository Receipts; (iii) summarises the changes to the Knowledge Base following the consultation in PMB No. 24; and (iv) consults on a new technical note on prospectus requirements for schemes of arrangement and gives further updates of its technical and procedural notes to reflect the Prospectus Regulation. This last point was considered by the Committee at item 4.7 above.

(d) *Public censure and fine of Yü Group plc.* On 10 August 2020, the London Stock Exchange published an AIM disciplinary notice (AD23) announcing that it has agreed settlement terms with Yü Group plc for a public censure and fine of £300,000 for breaches of Rule 10 (Principles of disclosure) and Rule 31 (AIM company and directors' responsibility for compliance) of the AIM Rules for Companies. AD23 states that the LSE has waived the fine, having regard to the uncertainties and potential financial challenges for Yü Group plc arising from the unprecedented conditions of the Covid-19 pandemic.

(e) *European Commission coronavirus response: Making capital markets work for Europe's recovery.* On 24 July 2020, the European Commission issued a press release announcing the adoption of a Capital Markets Recovery Package, as part of the Commission's overall coronavirus recovery strategy. The measures aim to make it easier for capital markets to support European businesses to recover from the crisis. The package proposes targeted changes to capital market rules, which will encourage greater investments in the economy, allow for the rapid re-capitalisation of companies and increase banks' capacity to finance the recovery. The package contains, amongst other things, amendments to the Prospectus Regulation to create a temporary 'EU Recovery Prospectus' (a type of short-form prospectus) for companies that have a proven track record in the public market (see proposed EU regulation and annex). A Q&A has been published.

(f) *Consultation on delay to the implementation of the ESEF*. On 22 July 2020, the FCA published a consultation on delaying the implementation of the European Single Electronic Format (**ESEF**) by one year due to the coronavirus pandemic. The FCA has proposed these changes to allow issuers to focus on more immediate and significant priorities. However, issuers will be able to publish and file their annual financial reports voluntarily in the new ESEF if they choose to do so. The consultation closed on 28 August 2020.

5.5 **MAR**

(a) *FCA Decision Notice in respect of a trader and portfolio manager for market manipulation*. On 16 September 2020, the FCA issued a press release announcing the publication of a Decision Notice in respect of Mr Abbattista, an experienced trader and a portfolio manager, partner and Chief Investment Officer at Fenician Capital Management LLP, for market abuse. The case concerns his trading via DMA (direct market access; therefore using CFDs) in various equities in 2017. The FCA has found that Mr Abbattista committed market manipulation by placing large orders that he did not intend to execute on the opposite side of the order book to existing smaller genuine orders. That conduct was found to be "reckless", in part because Mr Abbattista continued to trade in this way after he was warned by a colleague that the trading pattern might attract scrutiny. The FCA has fined Mr Abbattista £100,000 and prohibited him from performing any functions in relation to regulated activity on grounds of lack of integrity. Mr Abbattista has referred the matter to the Upper Tribunal.

(b) See item 5.4(c) above - PMB No. 30.

5.6 **Accounting**

(a) No items to consider.

5.7 **Takeovers**

(a) See items 4.7 and 5.4(c) above - New technical note on prospectus requirements for schemes of arrangement.

5.8 **Miscellaneous**

(a) *Call for evidence on modernisation of the stamp taxes on shares framework.* On 21 July 2020, the HMRC published a call for evidence on the modernisation of the stamp taxes on shares framework. The call for evidence invites views on the principles and design of a new framework for stamp duty and stamp duty reserve tax, both of which tax transactions in shares and securities, with a view to longer-term modernisation of the stamp duty framework. The consultation closes on 13 October 2020. The CLLS revenue law sub-committee is proposing to respond to this consultation.

(b) *Consultation on regulatory framework for approval of financial promotions*. On 20 July 2020, HM Treasury published a consultation on a regulatory framework for approval of financial promotions. HM Treasury is proposing to establish a regulatory 'gateway', which a firm must pass through before it is able to approve the financial promotions of unauthorised firms so that any firm wishing to approve such financial promotions would first need to obtain the consent of the FCA. This is in order to strengthen the FCA's ability to ensure the approval of financial promotions operates effectively. The consultation closes on 25 October 2020.

5.9 **Cases**

(a) *AXA S.A. v (1) Genworth Financial International Holdings, LLC (2) Genworth Financial, Inc. [2020] EWHC 2024 (Comm)*. The High Court had to consider the meaning of the words "subject to Taxation in the hands of the receiving party" in a gross up clause in an SPA. The High Court held that the phrase meant "actually taxed in the hands of the receiving party" (rather than "within the scope of a Tax and not exempt"). The High Court concluded that an additional amount was only payable under the gross up clause if and when the recipient was under an enforceable obligation to pay actual tax on the relevant payment, such tax having been assessed by the relevant revenue authority and determined as being due. The High Court was satisfied that this was the ordinary and natural meaning of the words used and accorded with the obvious commercial purpose of the gross up clause and business common sense.

(b) *Ciban Management Corporation v Citco (BVI) Ltd and another [2020] UKPC 21*. In considering possible limitations to the Duomatic principle of informal unanimous shareholder consent, the Privy Council held that where the ultimate beneficial owner (and not the registered shareholder) is taking all the decisions in the relevant transactions, the Duomatic principle applies as regards the consent of (and authority given by) the ultimate beneficial owner rather than the legal owner. It should however be noted that this determination may be limited in scope due to the particular facts of the case including, in particular, the fact that the shares in question were bearer shares. The Privy Council also held that the Duomatic principle can apply to ostensible authority (as well as actual authority) i.e. ostensible authority can be conferred informally by unanimous shareholder consent.

(c) *Houldsworth Village Management Company Limited v Keith Barton [2020] EWCA Civ 980*. The Court of Appeal had to consider the right of members of a company to inspect the current register of members under section 116 CA 2006. The Court of Appeal held that a member's request to inspect the register of members for the purpose of seeking a general meeting of members to propose resolutions to remove and replace the existing directors of the leaseholder-owned property management company and the managing agent was a proper purpose. The judgment refers to the two relatively recent Court of Appeal decisions that have considered the approach to what amounts to a proper purpose under section 117 CA 2006 (*In re Burry & Knight Ltd [2014] EWCA Civ 604* and *Burberry Group plc v Fox-Davies [2017] EWCA Civ 1129*) and also sets out the summary of the effect of these cases found in *The Hut Group Limited v Zedra Trust Company (Jersey) Limited* (unreported). The Court of Appeal considered that a shareholder who is seeking to communicate with other shareholders in order to make a challenge in good faith to the way the company is being run, should normally be regarded as having a proper purpose. It also considered that it is not correct to read Arden LJ's observation in *Burry* as a rigid rule that a request is not made for a proper purpose where it is not made by "a member as member" – her observation is no more than a reflection of the fact that members are in general likely to be interested, and properly so, in the proper running of the company.

(d) *Everest Alliance Limited v Dr Pavel Maslovskiy and others [2020] EWHC 2035 (Ch)*. The High Court had to interpret an article in a company's articles of association that provides that any director appointed by the board (pursuant to the article that gives the board power to appoint directors) shall retire at the first annual general meeting of the company (**AGM**) following his appointment. The High Court held that the article giving the board power to appoint directors did not prevent any appointment taking effect in the future. However, it held that the article did not allow the board to appoint a director whose appointment would take effect after the next AGM (i.e. a "straddling appointment"). The High Court interpreted "appointment" in this article to mean the formal act of appointing made on the date of the board resolution pursuant to which the director was appointed, rather than when the office of director is assumed on the date on which the appointment takes effect. This case was considered by the Committee at item 4.5 above.

(e) *Re Columbus Energy Resources plc [2020] EWHC 2452 (Ch) (judgment on Westlaw and Lawtel)*. The High Court had to consider whether to sanction a scheme of arrangement under Part 26 CA 2006 and the application of Schedule 14 of the Corporate Insolvency and Governance Act 2020 (**CIGA 2020**) to court-convened scheme meetings. One of the key issues before the High Court was whether there had been a meeting, given that shareholders had not been permitted to attend the meeting in person, and had not been able to participate in the meeting (other than being able to vote by proxy). Mr Justice Trower considered that the meetings provisions in paragraph 3 of Schedule 14 to the CIGA 2020 applied to meetings of members of a company under Part 26 CA 2006, so that: (i) meetings convened by the court under s.896 CA 2006 may be held, and any votes may be permitted to be cast, by electronic means or other means (paragraph 3(4)); (ii) such meetings may be held without any number of those participating in the meeting being together at the same place (paragraph 3(5)); and (iii) a member of the company does not have a right to: (a) attend the meeting in person; (b) participate in the meeting other than by voting; or (c) vote by particular means (paragraph 3(6)). Mr Justice Trower noted that, on the face of it, the exclusion of the right to participate at the meeting other than voting appeared to be inconsistent with one of the principal purposes of a meeting summoned under s.896 CA 2006, which was for the members to be able to consult with each other for determining whether or not to approve the scheme. In his view, absent legislative intervention, the ability of creditors or members to consult together at a meeting is a central part of the process by which they approve a scheme of arrangement. However, Mr Justice Trower highlighted that the statutory requirements for approval are simply that the statutory majorities are fulfilled and that the CA 2006 does not explicitly require that consultation must be able to take place. The scheme was sanctioned.

6. Any other business

CLLS 2020 AGM. It was noted that at the CLLS 2020 AGM, the Chair of the City of London Law Society emphasised the work of the various committees and thanked all the members of the committees for their work.

25 October 2020