

THE CITY OF LONDON LAW SOCIETY  
COMPANY LAW COMMITTEE

Minutes

for the 314<sup>th</sup> meeting  
at 9:00 a.m. on 30<sup>th</sup> March 2022

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1. **Welcome and apologies**

*In attendance:* John Adebisi; Mark Austin; Sam Bagot; Edward Baker; Adam Bogdanor; Robert Boyle, Tom Brassington; Lucy Fergusson; Kevin Hart; Chris Horton; Marianna Kennedy (alternate for Nicholas Holmes); Alfred King (alternate for John Papanichola); Vanessa Knapp; Gerard Lee (Acting Secretary); Stephen Mathews; Jon Perry; David Pudge (Chair); Caroline Rae; Matthew Rous (Chief Executive of the CLLS); Richard Spedding; Patrick Speller; Allan Taylor; Liz Wall; Martin Webster; and Victoria Younghusband.

*Apologies:* Nicholas Holmes; Juliet McKean; and John Papanichola.

2. **Approval of minutes**

A draft version of the minutes of the meeting held on 26 January 2022 was circulated to members on 24 March 2022. The Chair asked members to send any comments on the minutes to the Acting Secretary in the next couple of days, otherwise the minutes would be considered settled.

3. **Matters arising**

3.1 *Industry Working Group's interim report on Electronic Execution of Documents.* The Chair reported that on 1 February 2022, the Ministry of Justice announced the publication of the interim report of the Industry Working Group on Electronic Execution of Documents, which includes the Industry Working Group's analysis of the current situation in England and Wales, best practice guidance based on existing technology and recommendations for future analysis and reform.

3.2 *Takeover Panel PCP 2021/1.* The Chair reported that on 4 February 2022, the Joint CLLS/Law Society Takeovers Working Group submitted its response to the Takeover Panel's Public Consultation Paper 2021/1 on miscellaneous code amendments.

3.3 *Practice Statement No. 20 amended.* The Chair reported that on 9 February 2022, the Takeover Panel published Panel Statement 2022/6, which announces amendments to Practice Statement No. 20 (Rule 2 – Secrecy, possible offer announcements and pre-announcement responsibilities).

3.4 *Dormant Assets Act 2022.* The Chair reported that on 24 February 2022, the Dormant Assets Bill received Royal Assent, becoming the Dormant Assets Act 2022. The Act expands the scope of the Dormant Assets Scheme established by the Dormant Bank and Building Society Accounts Act 2008 to include a range of additional financial assets, including long-term insurance assets, pension assets, collective scheme investments,

client money and securities assets. The Committee noted that minor amendments have been made to the sections of the Bill relating to securities assets since it was introduced in the House of Lords in May 2021. It was also noted that the provisions of the Act expanding the Scheme will come into force on a day appointed by the Secretary of State.

- 3.5 *Finance Act 2022*. The Chair reported that on 24 February 2022, the Finance Bill 2021-22 received Royal Assent, becoming the Finance Act 2022. The Act enshrines in law fiscal measures announced in the Autumn Budget 2021, as well as new powers for: (i) HMRC to present a winding-up petition in respect of a body carrying on business as a promoter of certain tax avoidance schemes where it appears expedient in the public interest for the purposes of protecting the public revenue; and (ii) the court to wind up that body if it is of the opinion that it is just and equitable to do so.
- 3.6 *BEIS White Paper on corporate transparency and register reform*. The Chair reported that on 28 February 2022, BEIS published a White Paper on corporate transparency and register reform setting out the Government's final position on proposed reforms to Companies House following a series of consultations in December 2020, namely on: (i) the powers of the Registrar (response led by Richard Spedding); (ii) implementing the ban on corporate directors (response led by Liz Wall); and (iii) improving the quality and value of financial information on the UK companies register (response led by Robert Boyle).

It was noted that the White Paper sets out the categories of natural persons who will be required to have a verified account at Companies House. A director who has not registered at Companies House with a verified account by the end of a set period after their appointment will be committing an offence and may also be liable for a civil penalty, and a company that is directed by an unverified director will also commit an offence. Similar processes and requirements will apply for other individuals associated with registrable entities. The Committee noted that the White Paper confirms a number of other reforms linked to identity verification, including a requirement for corporate directors to have all natural person directors (though the White Paper confirms that the Government is not minded to extrapolate the same restrictions for corporate members of LLPs or corporate general partners of LPs) and a requirement for corporate directors of limited companies to be registered within the UK.

The Committee also noted that the Registrar of Companies (**Registrar**) will have new powers to query and reject new filings, as well as to query information already on the register, where errors, anomalies or inaccuracies are identified or information is identified as potentially fraudulent, suspicious, or might otherwise impact upon the integrity of the register or wider business environment. It was also noted that BEIS had sought to address concerns relating to the removal of material submitted to Companies House that has legal consequence once filed, by stating its belief that the removal of such material should, in the majority of cases, remain a matter for the courts.

The Chair reported that the White Paper sets out a number of other reforms relating to operational transformation of Companies House, enhanced data sharing, preventing abuse of personal information on the register and improving the financial information on the register.

The Committee noted that the Government has stated that it will introduce legislation to Parliament to give effect to the reforms "in the coming months" as part of a wider package of legislative proposals to tackle illicit finance.

- 3.7 *HMT response to consultation on the Wholesale Markets Review.* The Chair reported that on 1 March 2022, HM Treasury (**HMT**) announced the publication of its response to its consultation on the UK's regime for wholesale capital markets. It was noted that HMT states that its response sets out a package of reforms that will create a simpler and less prescriptive regime whilst maintaining or improving regulatory outcomes. The Committee noted that the Government believes that the case for the proposal in the consultation to develop a new venue/segment for micro, small and medium sized enterprises with a sub-£50 million market capitalisation was not conclusive and will continue to engage relevant stakeholders on this matter in 2022. HMT notes that the Government's intention was to consult on specific changes to its wholesale markets regime alongside broader changes to the regulatory framework through the Future Regulatory Framework Review, the consultation for which closed on 9 February 2022. Nevertheless, the response states that the Government will bring forward legislation relating to some of the reforms when parliamentary time allows, whilst the FCA will have the opportunity to make the appropriate rule changes to implement others.
- 3.8 *Outcome of the UK Prospectus Regime Review.* The Chair reported that on 1 March 2022, HMT announced the publication of the outcome of its consultation on the UK prospectus regime. As recommended in Lord Hill's UK Listings Review, the regulation of public offers of securities will be separated from the regulation of admissions of securities to trading, and the Government will delegate a greater degree of responsibility to the FCA to set out the detail of the new regime through rules.

The Committee noted that amongst the reforms, the criminal offence that currently prohibits requesting admission to trading on a UK regulated market without first having published an FCA-approved prospectus will be removed, and the FCA will be given enhanced rule-making responsibilities to specify when a prospectus is required.

In addition, rather than require a prospectus for a public offer of securities, there will be a general prohibition on public offers and a set of exemptions to that prohibition. It was noted that private companies will remain able to offer securities to the public without admitting them to a stock market, and the current requirement for an FCA-approved prospectus on offers over €8 million will be removed; instead, securities will be allowed to be offered to the public provided that the offer is made through a platform operated by a firm specifically authorised for the purpose. The Chair reported that the Government also intends to develop a new regime of regulatory deference for offers into the UK of securities listed on certain designated overseas stock markets, which will permit offerings to be extended into the UK on the basis of offering documents prepared according to the rules of the relevant overseas jurisdiction and market (i.e. it will not feature FCA review and approval of the offering documentation).

The Committee noted that the Government will legislate to replace the regime currently contained in the UK Prospectus Regulation when parliamentary time allows, and that the full suite of reforms will take full effect after the FCA has consulted on, and is ready to implement, new rules under its expanded responsibilities.

- 3.9 *Economic Crime (Transparency and Enforcement) Act 2022.* The Chair reported that in the early hours of 15 March 2022, the Economic Crime (Transparency and Enforcement) Bill received Royal Assent after being fast-tracked through the legislative process in response to the situation in Ukraine, becoming the Economic Crime (Transparency and Enforcement) Act 2022. The Act consists of three parts: (i) registration of overseas entities; (ii) unexplained wealth orders; and (iii) sanctions.

The Committee noted that Part 1 of the Act, which is partly based on the draft Registration of Overseas Entities Bill published by BEIS on 23 July 2018 (on which the Committee fed comments into a response coordinated by the CLLS Land Law Committee submitted on 14 September 2018), includes provision for a Register of Overseas Entities, a new beneficial ownership register of overseas entities that own UK properties to be held by the Registrar. The new requirements will come into effect on a day to be specified in regulations, and the Government has stated that Companies House will now begin work to implement the Register as quickly as possible.

The Committee also noted that Part 3 of the Act introduces a strict liability test for monetary penalties imposed for breaches of sanctions legislation, which will be brought into force by commencement regulations that are yet to be published. The Act amends section 146 of the Policing and Crime Act 2017 to provide that, for the purposes of monetary penalties to be imposed by HMT on a person if it is satisfied on the balance of probabilities that the person has breached financial sanctions legislation, any requirement imposed by that legislation for the person to have known, suspected or believed any matter is to be ignored. However, the Act does not change the knowledge requirements to establish criminal offences under financial sanctions legislation. In light of Part 3 of the Act, the Committee discussed: (i) the steps listed companies should be taking in respect of due diligence on their share registers; and (ii) how sanctions apply to the voting of shares in listed companies.

#### 4. **Discussions**

- 4.1 *Takeover Panel PCP 2022/1.* The Chair reported that on 7 February 2022, the Takeover Panel published Panel Statement 2022/5, which announces the publication of Public Consultation Paper 2022/1. PCP 2022/1 proposes the removal of the restriction on an offeror purchasing shares in the offeree company through an anonymous order book in Rule 4.2(b) of the Takeover Code. The Committee noted that the consultation closed on 18 March 2022, on which day the Joint CLLS/Law Society Takeovers Working Group submitted its response. It was also noted that the Code Committee expects to publish a Response Statement setting out the final amendments to the Takeover Code in Spring 2022, at the same time as it publishes its response to the consultation on PCP 2021/1 (see item 3.2), and anticipates that the amendments will come into effect approximately one month after the publication of the Response Statement.
- 4.2 *'oneNDA for M&A' project.* Liz Wall and Sam Bagot provided an update to the Committee.
- 4.3 *Share security and the NSI Act.* The Chair reported that, as discussed at the meeting of the Committee in January, the CLLS Financial Law Committee (CLLS FLC) had written to Lord Callanan (Minister for Business, Energy and Corporate Responsibility) and the ISU to highlight legal issues of significant concern for existing and proposed

transactions regarding the application of the NSI Act where security over shares of a company in a specified sector is taken. The Chair further reported that Lord Callanan replied by letter on 7 February 2022, to which the CLLS FLC issued a further response on 28 February 2022. Following that letter, a call was held with BEIS on 22 March 2022 in which it agreed to consider further the issues raised. It was noted that BEIS also agreed that the part of Lord Callanan's letter relating to grants of security over shares where such grant may create an equitable interest may be published on the website of the CLLS. The Chair reported that the CLLS FLC is producing a note including the relevant extract, to be shared with BEIS before publication.

The Chair noted that whilst Lord Callanan's letter provided some welcome comfort that the grant of security over shares creating an equitable interest does not fall within the scope of mandatory notification until the happening of an event that would provide actual control, there was still concern among finance practitioners that BEIS had not proposed amending regulation in order to put the issue beyond all doubt given its significance to their practice. The Chair also noted that the CLLS FLC's concerns relating to automatic enforcement provisions (where lenders become automatically entitled to exercise voting rights on the occurrence of a default event) had not yet been addressed.

- 4.4 *HMT UK Secondary Capital Raising Review*. The Chair reported that on 31 January 2022, a call was held with the Review Team. Mark Austin provided an update to the Committee.
- 4.5 *FCA consultation on diversity and inclusion on company boards and executive committees*. The Chair reported that on 28 February 2022, a call was held with the FCA following the response of a working group of the Committee (led by Nicholas Holmes) to the FCA's consultation on diversity and inclusion on company boards and executive committees (submitted on 20 October 2021).
- 4.6 *Primary Markets Effectiveness Review*. The Chair reported that on 10 March 2022, the FCA held a roundtable event with members of the CLLS CLC liaison group to discuss how a potential new single listing segment for shares in commercial companies could be structured to encourage more companies to list in the UK, whilst retaining high standards of shareholder engagement and corporate governance. Victoria Younghusband provided an update to the Committee.

## 5. **Recent developments**

The Committee noted the following additional items in sections 5.1 to 5.9 which were set out in the agenda but which time did not allow them to consider, other than the Chair briefly commenting on items 5.4(b), 5.7(b) and 5.8(c) and on the cases in items 5.9(b) and 5.9(d).

### 5.1 **Company law**

- (a) *Companies House introduces same day service for certified copies*. On 1 March 2022, Companies House updated its guidance on how to order certified copies of certificates and documents held on the Companies House register to include provision for a new same day service for ordering certificates of incorporation with certified facts and certified copies of documents held on the register. The

same day service costs £50 and is available if the order is placed before 11:00 a.m. by calling the Companies House contact centre.

## 5.2 Corporate governance

- (a) *Research on Audit Committee Chairs' approach to audit quality.* On 26 January 2022, the FRC announced the publication of an independent research paper commissioned by the FRC on Audit Committee Chairs' views on, and approach to, audit quality. The research, conducted by YouGov, was based on in-depth interviews with Audit Committee Chairs discussing how they carry out their role and reinforces the case for developing standards for Audit Committees to help promote a more consistent approach to audit quality.
- (b) *FTSE Women Leaders Review.* On 22 February 2022, the FTSE Women Leaders Review, an independent, voluntary and business-led initiative supported by the Government, announced the publication of its first report on the representation of women on FTSE 350 boards and in their leadership teams. Amongst other things, the report states that as at 10 January 2022 women held 39.1% of FTSE 100 board positions (up from 36.2% in 2020) and 36.8% of FTSE 250 board positions (up from 33.2% in 2020), but 15 FTSE 100 companies and 57 FTSE 250 companies had not yet achieved the 33% target from the prior Hampton-Alexander Review. The report also sets out four recommendations to build on the work of the former Hampton-Alexander and Davies Reviews: (i) increasing the voluntary target for FTSE 350 boards and leadership teams to a minimum of 40% women's representation by the end of 2025; (ii) FTSE 350 companies having at least one woman in the Chair or Senior Independent Director role and/or one woman in the Chief Executive Officer or Finance Director role by the end of 2025; (iii) key stakeholders (such as the investment community and corporate governance agencies) continuing to set best-practice guidance, or have in place alternative mechanisms as appropriate, to encourage any FTSE 350 board that has not yet achieved the 33% target to do so; and (iv) extending the scope of the Review to include the largest 50 private companies in the UK by sales.
- (c) *PLSA Stewardship and Voting Guidelines 2022.* On 23 February 2022, the Pensions and Lifetime Savings Association (**PLSA**) announced the publication of its Stewardship Guide and Voting Guidelines 2022. In relation to the three key areas highlighted in the press release, the PLSA: (i) expects the Taskforce on Climate-related Financial Disclosures (**TCFD**) framework to be referenced in company reports - if a large company does not reference the TCFD framework, the PLSA recommends that investors consider voting against the company's climate change and sustainability policy; (ii) considers that companies (particularly those which have benefitted from Government support during the pandemic) should demonstrate caution in remuneration packages given the continued impact of COVID-19 and the substantial increase in the cost of living; and (iii) recommends that investors consider voting against the re-election of the Chair and the Chair of the Nominations Committee if the board has not established a diversity and inclusion policy and strategy.
- (d) *IA shareholder priorities and IVIS approach for 2022.* On 1 March 2022, the Investment Association (**IA**) announced the publication of IA Shareholder

Priorities and IVIS approach for 2022, which sets out investors' expectations ahead of the 2022 AGM season in relation to key areas such as responding to climate change, accounting for climate change, audit quality, diversity and stakeholder engagement. The IA's Institutional Voting Information Service (IVIS) will 'red top': (i) FTSE 100 companies that have not met the Parker Review target of one director from a minority ethnic group; (ii) FTSE 350 companies where women represent 33% (previously 30%) or less of the board or 28% (previously 25%) or less of the executive committee and their direct reports; and (iii) FTSE Small Cap companies where women represent 25% or less of the board or 25% or less of the executive committee. IVIS will also 'amber top': (i) companies that do not make disclosures against all four pillars of TCFD; and (ii) FTSE 250 companies that do not disclose either the ethnic diversity of their board or a credible action plan to achieve the Parker Review targets by 2024.

- (e) *Update report from the Parker Review.* On 16 March 2022, the Parker Review announced the publication of the results of its latest voluntary census on the ethnic diversity of FTSE 100 and FTSE 250 companies' boards, carried out jointly with BEIS. In 2017, the Parker Review set a "One by 2021" target for all FTSE 100 boards to have at least one director from a minority ethnic background by December 2021 and a similar "One by 2024" target for all FTSE 250 boards. The report indicates that as at 31 December 2021, all FTSE 100 companies having responded, 89 FTSE 100 companies met the "One by 2021" target, and of the 233 FTSE 250 companies that responded, 128 already met the "One by 2024" target. The Parker Review recommends that, given that the majority of minority ethnic directors reported were non-executive directors, continued attention be focused on minority ethnic representation amongst executive directors. The report also includes preliminary findings of research undertaken on behalf of the FRC by The Gender, Leadership and Inclusion Research Centre at Cranfield University, working in conjunction with the consultancy Delta Alpha Psi, on the barriers preventing individuals from minority ethnic groups achieving senior representation in FTSE 100 and FTSE 250 companies.

### 5.3 Reporting and disclosure

- (a) *BEIS guidance on mandatory climate-related financial disclosures.* On 21 February 2022, BEIS published non-binding guidance on mandatory climate-related financial disclosures by publicly quoted companies, large private companies and LLPs under the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 and the Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022. The guidance covers, amongst other things: (i) the scope of the regulations; (ii) the information that should be included in relation to each element of the disclosure requirements common to the two sets of regulations; (iii) the level of detail required; (iv) whether third party information can be relied on to make the disclosures; and (v) interaction with other regulation and frameworks.
- (b) *FRC report on quality of reporting.* On 23 February 2022, the FRC announced the publication of the first report on the quality of reporting by private companies following the Wates Corporate Governance Principles for Large

Private Companies. Whilst the report acknowledges that it is relatively early to draw too many conclusions (with some companies still having completed only their first cycle of reporting against the Wates Principles), it concludes that even though the FRC has found some good examples of reporting, there is much room for improvement.

- (c) *PLSA report on workforce reporting in the FTSE 100.* On 8 March 2022, the PLSA published a report in partnership with the CIPD and Railpen analysing the quality of disclosures in the 2021 annual reports of FTSE 100 companies against a number of key themes relating to the workforce. Key findings include: (i) only 22% of FTSE 100 employers reported the ethnic breakdown of their workforce (up from 10% in 2019); (ii) whilst almost all companies (97%) mentioned investment in skills or training, only a few provided concrete evidence of this; (iii) overall, there was a lack of reporting on pay and reward beyond gender and ethnicity pay gap reporting; and (iv) only 13% of annual reports discussed mental wellbeing in relation to health and safety or risk assessments.
- (d) *FRC updates list successful signatories to the UK Stewardship Code.* On 10 March 2022, the FRC published an updated list of signatories to the UK Stewardship Code.
- (e) *FCA issues warning notices to Metro Bank plc and certain individuals.* On 16 March 2022, the FCA issued Warning Notice Statement 22/2, which states that on 17 January 2022 the FCA issued warning notices to Metro Bank plc and certain unnamed individuals. The Statement does not specify whether the FCA is at this stage proposing a public censure of Metro Bank and the relevant individuals, or a financial penalty.
- (f) *FCA consults on permitted electronic formats for annual reports.* On 25 March 2022, the FCA published Consultation Paper CP22/5, which proposes minor changes to the UK Transparency Directive European Single Electronic Format Regulation to allow companies to use a more up to date electronic format for their annual financial reports. The FCA proposes to change the definition of UKSEF in the range of permitted taxonomies in Article 2(4B) of the TD ESEF Regulation so that it refers to UKSEF 2022 v.2.0.0 instead of v1.0.0 with effect from 3 May 2022. The new version is a replacement version of the taxonomy issued by the FRC earlier this year in its 2022 taxonomy suite, which reflects updated standards following recently adopted EU legislation on the European Single Electronic Format. The consultation closes on 8 April 2022 and the FCA has already updated its website to inform issuers and software vendors that this new version has been published.

#### 5.4 Equity capital markets

- (a) *PMB No. 38.* On 25 February 2022, the FCA published Primary Market Bulletin No. 38. In this edition, the FCA confirms that its Knowledge Base has been updated with the addition of Primary Market Technical Note: TCFD aligned climate-related disclosure requirements for listed companies (February 2022 / Primary Market / TN / 802.1), on which it consulted in Primary Bulletin No. 36. The Technical Note sets out the FCA's disclosure expectations and



supervisory strategy in relation to the climate-related disclosure requirements for listed companies.

- (b) *PMB No. 39.* On 23 March 2022, the FCA published Primary Market Bulletin No. 39. In this edition, the FCA announces the removal of temporary measures introduced in 2020 in response to the COVID-19 pandemic that: (i) allowed issuers an additional two months to publish their annual financial reports and an additional month to publish their half yearly financial reports; (ii) permitted issuers, under certain circumstances, to disclose their key assumptions on business disruption during the pandemic without requiring the inclusion of a qualified working capital statement in prospectuses and circulars approved by the FCA; and (iii) modified the Listing Rules to allow premium listed companies to apply for a dispensation from the requirement to hold a general meeting to approve Class 1 and related party transactions. The temporary measures will be removed with effect from 28 June 2022.
- (c) *Update of AIM financial reporting deadlines.* On 23 March 2022, the London Stock Exchange published an Inside AIM advising that the temporary measures in place for half-yearly reports (the additional one month in which to notify them pursuant to AIM Rule 18) and annual audited accounts (the three-month extension to the reporting deadline pursuant to AIM Rule 19) will no longer be available for any half-year financial periods and any annual financial periods ending after 28 June 2022.

## 5.5 MAR

- (a) *CFO guilty of charges concerning the making of false and misleading statements to the market.* On 11 February 2022, the FCA issued a press release announcing that, following a prosecution brought by the FCA against three former employees of Redcentric Plc, the former Chief Financial Officer had been found guilty of two counts of making a false or misleading statement contrary to section 89(1) of the Financial Services Act 2012 and three counts of false accounting contrary to section 17(1)(a) of the Theft Act 1968. On 3 March 2022, the FCA issued an additional press release announcing that he had been sentenced to five and a half years imprisonment and disqualified from being a director for ten years.
- (b) *FCA statement on the impact on financial markets of events in Ukraine.* On 3 March 2022, the FCA published a statement noting the multiple impacts on companies with securities admitted to UK markets of the events in Ukraine and the wide range of financial sanctions imposed in response on Russia, Russian individuals and Russian business. The statement reminds issuers of securities admitted to UK trading venues of their disclosure obligations under the UK Market Abuse Regulation, noting that both the invasion and responses to it by governments globally may alter the nature of information that is material to a business' assets, operations and prospects, and advises that companies assessing the effect of financial sanctions in all relevant jurisdictions should where necessary take legal advice. The statement also reminds companies that disclosure obligations continue to apply even where trading of securities has been suspended.

## 5.6 Accounting

- (a) *FRC issues January 2022 editions of UK and Ireland accounting standards.* On 31 January 2022, the FRC issued January 2022 editions of various UK and Ireland accounting standards that replace those issued in March 2018 (with the exception of the Overview of the financial reporting framework, which was issued in July 2015). See item 5.6(a) in the annex for the documents issued.

## 5.7 Takeovers

- (a) See item 4.1.
- (b) *Takeover Panel notes to advisers.* On 24 March 2022, the Takeover Panel Executive published the following notes to advisers: (i) Note to advisers in relation to the disclosure of information on Rule 9 of the Takeover Code, which includes pro forma drafting that may be used where a company provides information in relation to Rule 9 to potential investors when seeking the admission of its shares to trading on a stock exchange if a person or group of persons acting in concert will be interested in shares which carry 30% or more of the voting rights of that company following admission. (ii) Note to advisers in relation to Rule 2.8 statements, which includes two examples of Rule 2.8 statements in relation to situations where, at the time the Rule 2.8 state is made: (i) no third party has announced a firm intention to make an offer; and (ii) a third party has announced a firm intention to make an offer. (iii) Revised note to advisers in relation to re-registering a public company as a private company, which includes pro forma drafting for inclusion in the re-registration circular or explanatory memorandum to be sent to shareholders before the relevant resolution is passed.

## 5.8 Miscellaneous

- (a) *Money Laundering and Terrorist Financing (Amendment) Regulations 2022.* On 14 February 2022, the Money Laundering and Terrorist Financing (Amendment) Regulations 2022 were made. The regulations came into force on 9 March 2022 and amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to extend the deadlines imposed on trustees for registering and updating information on the UK's register of express trusts and to amend the categories of trusts that are required to register.
- (b) *Brexit.* On 31 January 2022, the European Scrutiny Committee launched an inquiry into the future of retained EU law. The call for evidence closed on 14 March 2022. The Government also announced that it will bring forward a 'Brexit Freedoms' Bill which looks to "end the special status of EU law". The Bill will make it easier to amend or remove outdated retained EU law and will accompany a major cross-government drive to reform, repeal and replace outdated EU law.
- (c) *European Commission proposal for directive on corporate sustainability due diligence.* On 23 February 2022, the European Commission announced a proposal for a directive on corporate sustainability due diligence, published

together with an annex, questions and answers and a factsheet. The scope of the proposed directive includes non-EU companies with: (a) more than 500 employees and an EU-generated net turnover of more than €150 million in the previous financial year; and/or (b) more than 250 employees and an EU-generated net turnover between €40 million and €150 million in the previous financial year, provided that at least 50% of its net worldwide turnover was generated in a high-impact sector(s) (such as textiles, agriculture and extraction of minerals). In-scope companies will be required to adopt human rights and environmental due diligence measures on their operations, subsidiaries and value chains. It is proposed that the directive will enter into force on the twentieth day following that of its publication in the Official Journal. Member States will then have two years to implement the directive, with the provisions applicable to the companies in group (a) above to apply from that date, and those to the companies in group (b) to apply two years later.

## 5.9 Cases

- (a) *Re Amicus Finance Plc (in administration) [2021] EWHC 3036 (Ch)*. For the first time, the High Court sanctioned a restructuring plan under Part 26A of the Companies Act 2006 proposed by a company's administrators, which also involved the exercise of the court's power under section 901G of the Companies Act 2006 to 'cram down' a dissenting class of creditors. The plan had been approved by the requisite majority at four out of five creditors' class meetings. The High Court had to consider whether condition A in section 901G (i.e. whether the court was satisfied that, if the plan was sanctioned, none of the members of the dissenting class would be any worse off than they would be in the event of a relevant alternative) had been met. The High Court held that the condition was to be assessed on the balance of probabilities (as opposed to requiring the administrators to demonstrate that there was "no real prospect" or "no realistic possibility" of a better outcome).
- (b) *Re West African Gas Pipeline Company Ltd [2021] EWHC 3360 (Ch)*. The High Court granted an application to convene a meeting to approve a proposed scheme of arrangement to amend a Bermudian company's English law shareholders' agreement, which (like its Bermudian bye-laws) required unanimity amongst all of its shareholders to carry out certain corporate acts. The amendment was necessitated by the lack of a person with proper authority to exercise the voting rights of one of the six members of the company. To resolve this deadlock, the company proposed two parallel and inter-conditional schemes of arrangement: a scheme in the English courts to amend the shareholders' agreement and a scheme in the Bermudian courts to amend the bye-laws, both amendments to allow shareholder resolutions to be passed with 90% approval provided that no shareholder votes against. The High Court was satisfied that the English court had territorial jurisdiction to approve the English scheme on the basis that the shareholders' agreement was governed by English law, and under English conflict of laws there would be reasonable doubt as to whether an amendment to the shareholders' agreement pursuant to a Bermudian scheme of arrangement would be enforceable under English law. It is the first reported instance of a solvent members' scheme of an overseas company being sanctioned by an English court.

- (c) *Re Waterside Nursery Ltd [2022] EWHC 327 (Ch)*. The High Court found that it had jurisdiction to issue a suspended cancellation order in respect of share warrants to bearer that remained in existence, despite the company not having applied for such an order within the time period prescribed by Schedule 4 to the Small Business, Enterprise and Employment Act 2015 (**Schedule 4**). The High Court's decision took into account a number of factors, including that the clear aim of Schedule 4 was to abolish bearer shares as part of legislative changes designed to ensure greater transparency of company ownership and control, and an interpretation which confined the court's jurisdiction to applications made within the prescribed time period was more likely to frustrate than to achieve that objective and leave the shares 'in limbo'. The judgment also observed that Schedule 4 prevents any application for voluntary striking off under section 1003 of the Companies Act 2006 at a time when there is a share warrant outstanding, illustrating the view that Parliament must have intended that a mechanism would continue to be available for share warrants to be cancelled after the prescribed time period had elapsed.
- (d) *Re Fore Fitness Investments Holdings Ltd, Hashmi v Lorimer-Wing [2022] EWHC 191*. The High Court considered the interaction between Model Articles 7(2) and 11(2) for private companies limited by shares, as modified by a company in its bespoke articles (**Bespoke Articles**). The Bespoke Articles generally incorporated the Model Articles, including Model Article 7(2), which provides that if the company only has one director and no provision of the articles requires it to have more than one director, the general rule that any decision of the directors must either be a majority decision at a meeting or a unanimous written resolution does not apply and the director may take decisions without regard to any of the provisions of the company's articles relating to directors' decision-making. However, Bespoke Article 16 expressly modified the quorum provisions of Model Article 11(2) to provide that the quorum for board meetings was two directors: one an investors' director and one the executive. The High Court found that a provision in articles of association requiring there to be at least two directors in order for board meetings to be quorate is "logically" a requirement that the company in question have two directors in office in order to manage its affairs, and Model Article 7(2) was thus disapplied. This resulted in the finding that the sole director of the company had acted ultra vires in purporting to commence a counterclaim in its name. The judge further remarked that in his view amendment is required for the Model Articles to permit for a single director to run a company (such amendment to include the deletion of Model Article 11(2), the quorum provision in the Model Articles).

## 6. Any other business

*Email from Robert Bell*. The Committee noted that Robert Bell, the President of the CLLS and Master of the City of London Solicitors' Company, had emailed all chairs of CLLS specialist committees asking them to pass on an email about membership of the City of London Solicitors' Company to their members and also to encourage them to join.

6 June 2022