



Minutes of the QCA Legal Expert Group (the "Committee")

Held on: Tuesday 26 November 2019, 9.00am-10.30am

Venue: CMS, Cannon Place, 78 Cannon Street, London, EC4N 6AF

Present:

Mark Taylor (Chair)	Dorsey & Whitney	MT
Danette Antao	Hogan Lovells	DA
Daniel Bellau	Hamlins	DB
Liga Dugdale	Thomson Reuters	LD
David Hicks	Charles Russell Speechlys	DH
Kate Higgins	Mishcon De Reya	KH
Martin Kay	Blake Morgan	MK
Nicola Mallett	Lewis Silkin	NM
Jaspal Sekhon	Hill Dickinson	JS
Donald Stewart	Bidstack Group	DS
Gary Thorpe	Clyde & Co LLP	GT
Anthony Robinson	Quoted Companies Alliance	AR
Jack Marshall	Quoted Companies Alliance	JM

1. WELCOME TO David Hicks (Charles Russell Speechlys) of the Law Society's Company Law Committee to discuss the work of the Law Society and the Company Law Committee.

The Law Society

DH gave an introduction to the Law Society's Company Law Committee (CLC) and a brief overview of the role of the organisation. DH explained that the CLC often works closely with the City of London Law Society (CLLS).

The main functions/objectives of the CLC are as follows:

- to keep under review and to promote improvements in the law, practice and procedure applying to (i) companies and businesses regardless of form; (ii) insolvency and (iii) financial services, including investment vehicles; and
- To consider and respond to Government, European and other regulatory initiatives, proposals, legislation and guidance affecting these areas, and to support and promote the role of solicitors in these fields.

Recently, the Law Society has been involved with reviews and/or assignments relating to:

- the PSC regime and producing a joint Q&A on the PSC regime with the CLLS; and;

- the draft Registration of Overseas Entities Bill. The CLC is due to meet with BEIS in order to discuss the British Overseas Entities Bill and highlight any issues with it.

The CLC differs from the QCA in that they it does not take a particular position on subject matters – they have to be agnostic and do not engage or participate in the lobbying that the QCA does. They do, however, have regard to proportionality and appropriateness of legislation to companies of different sizes and resources, without taking a political stance on such matters. When it comes to collaboration between the QCA and the CLC, there are areas where it is likely to be beneficial to come to a consistent approach on consultation matters. However, there are likely to be others where this may not be possible because the QCA’s views will, by definition, support its constituency of small to medium size quoted companies.

In terms of engagement with regulators and legislators, the CLC typically spends more time engaging with BEIS while the CLLS spends more time engaging with the FCA. The CLC has, however, been working with the FCA on a response to ESMA’s “three years’ on” consultation on the provisions of MAR.

Typically, the CLC meets every two months and about 20 to 30 members are in attendance.

Assignments are allocated to working groups within the CLC (and sometimes across other organisations), who are charged with providing responses to consultations and producing guidance.

2. APOLOGIES

Apologies for absence were received from Paul Arathoon, Ashmi Bhagani, Philippa Chatterton, Paul Cliff, Simon Cox, Kate Eades, Tunji Emmanuel, Kate Francis, Claudia Gizejewski, Francine Godrich, Stephen Hamilton, Sarah Hassan, Alex Iapichino, Nicholas Jennings, Jonathan King, Nicholas McVeigh, Maegan Morrison, Catherine Moss, Kieran Rayani, Kieran Stone and Jane Wang.

3. MINUTES OF LAST MEETING

The minutes of the meeting of the Committee held on 17 September 2019 were tabled and approved without amendment.

4. ISSUES FOR DISCUSSION

	ITEM	ACTION
a)	<p>ESMA consultation: MAR Review Report</p> <p>i. Mark Taylor to feedback to the group on the ESMA open hearing</p> <p>MT explained that the publication of ESMA’s consultation on the provisions of MAR is part of a prelegislated requirement to review the regulation three years following its adoption.</p> <p>MT provided an overview of the ESMA open hearing.</p> <p>The hearing was focussed on issues affecting Level 1 of MAR – i.e. matters which might justify amendment to the Regulations themselves as opposed</p>	

	<p>to matters which were capable of being dealt with by the issue of new or supplementary guidance. This shortened or eliminated some of the discussion which might otherwise have taken place.</p> <p>The open hearing proceeded on a line by line basis through the consultation paper, taking each of the 71 questions in order.</p> <p>The group then discussed the key elements of the consultation applicable to the QCA. This included comment that:</p> <ul style="list-style-type: none"> • The definition of inside information is considered to be broadly “fit for purpose”. However, the QCA’s view is that the market would benefit from guidance as to the labelling of announcements as containing price sensitive information since in a number of cases, announcements are being sent out with this statement included as a routine precaution even where the announcement does not contain any inside information. • There could be a need to clarify/change the Level 1 text in relation to the expression “significant effect on price”. The committee considered that the test should, in reality, be a two tier test with the materiality of the share price movement being one limb of the definition and the “reasonable investor” limb being the second limb. • There is potentially a need for further guidance on the conditions relating to the delay of disclosure of inside information – in particular the second condition, which states that the public should not be misled. • Many market participants within the EU do not have a dealing code and some clarification on how the dealings clearance procedure interacts with the delay of disclosure requirements would be helpful. • The view had been expressed by members of the Primary and Secondary Markets groups that the market sounding regime was considered too rigid, consisting of mandated processes and templates that are particularly onerous on the market sounding recipient. In particular it was felt that this regime should not be elevated to a compulsory procedure. • The SME regulations propose that, rather than having to produce an insider list on request, SMEs only have to produce a permanent insider list. 	<p>MT and JM to finalise consultation response and submit to ESMA.</p>
<p>b)</p>	<p>Post-general election engagement priorities and speakers for 2020.</p> <p>The group proposed to seek discussions with representatives from one or more of the following bodies:</p> <ul style="list-style-type: none"> • Political parties: <ul style="list-style-type: none"> ○ DExEU Minister ○ DExEU Shadow Minister • HM Treasury – policy • FCA – notification and dealing codes. 	<p>JM to invite potential guest speakers.</p>

5. COMMUNICATIONS AND PUBLICATIONS

	ITEM	ACTION
a)	<p>The YouGov/QCA AIM Corporate Governance survey is on course for completion and is due to be released later this month. YouGov surveyed companies that adopted the QCA Corporate Governance Code to identify the ways in which we might be able to improve the Code and see if we can find evidence that following the Code has helped companies.</p> <p>This was tabled for information only and not discussed.</p>	None.
b)	<p>The QCA and UHY Hacker Young are currently producing a good practice guide for governance on AIM. The guide is due to be released in December.</p> <p>This was tabled for information only and not discussed.</p>	None.
c)	<p>The project for updating the QCA's Remuneration Committee Guide is due to get underway. The project will upgrade the existing Guide from 2016 and is due to be released in the first half of 2020.</p> <p>This was tabled for information only and not discussed.</p>	None.
d)	<p>The dates and venues for the 2020 Legal Expert Group meetings are as follows:</p> <ul style="list-style-type: none"> i. Tuesday 21 January 2020, 9.00am – 10.30am, at Mishcon De Reya LLP, Africa House, 70 Kingsway, London, WC2B 6AH ii. Tuesday 17 March 2020, 9.00am – 10.30am, at Hill Dickinson LLP, The Broadgate Tower, 20 Primrose Street, London, EC2A 2EW iii. Tuesday 19 May 2020, 9.00am – 10.30am, at Shakespeare Martineau LLP, 60 Gracechurch Street, London, EC3V 0HR iv. Tuesday 7 July 2020, 9.00am – 10.30am, at Clyde & Co LLP, St Botolph Building, 138 Houndsditch, London, EC31 7AR v. Tuesday 15 September 2019, 9.00am – 10.30am, at Stifel, 150 Cheapside, London, EC2V 6ET vi. Tuesday 24 November 2020, 9.00am – 10.30am, TBC <p>This was tabled for information only and not discussed.</p>	None.

6. ANY OTHER BUSINESS

None.

7. NEXT MEETING

Tuesday 21 January 2020, 9.00am – 10.30am (Venue: Mishcon De Reya, Africa House, 70 Kingsway, London, WC2B 6AH)