

Minutes of the QCA Legal Expert Group



Held on: Tuesday 13 March 2018

Venue: Charles Russell Speechlys LLP, 5 Fleet Place, London, EC4M 7RD

Present:

Mark Taylor (Chair)	Dorsey & Whitney	MT
Danette Antao	Hogan Lovells International LLP	DA
Andrew Chadwick	Clyde & Co LLP	AC
Sarah Hassan	Practical Law Company Limited	SHa
David Hicks	Charles Russell Speechlys LLP	DH
Nicola Mallett	Lewis Silkin	NM
Nicholas McVeigh	Mishcon De Reya	NMc
Jaspal Sekhon	Hill Dickinson LLP	JS
Donald Stewart	Kepstorn LLP	DS
Jane Wang	Fasken LLP	JW
Callum Anderson (minutes)	Quoted Companies Alliance	CA

In attendance:

Tony Pullinger	The Takeover Panel	TP
Lisa Faragher	Hamlins LLP	LF
Darius Lewington	LexisNexis	DL
Jack Shepherd	CMS	JS

1. WELCOME TO TONY PULLINGER, THE TAKEOVER PANEL

MT welcomed TP to the meeting.

TP briefly gave an overview of the Panel, including the Panel's five main principles – flexibility, wide discretion, pragmatism, speed and certainty – as well as the Panel's organisational structure. He noted that the QCA, which has been represented on the Panel since 2015, played a key role in representing the smaller company constituency. He added that as it celebrates its 50th anniversary in 2018, it had regulated over 8,600 bids.

TP advised the Expert Group on the best way to consult and communicate with the Panel. He noted that the telephone number – 020 7382 9026 – should generally be the first port of call for any enquiries.

TP summarised the Panel's recent work, noting that the takeover and whitewash rates had increased in 2018 relative the previous year. He discussed the long-term upward trend of Schemes of Arrangement since the turn of the century (up from 8% in 2001/02 to 62% in 2017/18).

With respect to smaller and mid-size quoted companies, TP noted that as 50% of Code-regulated takeovers were worth less than £50m, it was not the intention of the Panel to create a "Code-light" regime specifically

for smaller companies. However, he noted that the Panel's Executive recognised that smaller companies did not have the resources of their larger counterparts and so would always be pragmatic on any rulings.

TP explained that the Panel would consult on changes to the Code resulting from Brexit in autumn 2018, although he added that the Panel's work would not be heavily impacted by Brexit, regardless of the deal negotiated due to the fact that EU Takeover Directive was largely based on the UK model.

TP and the Expert Group briefly discussed post-offer undertakings and statement of intention, noting the consultation process that took place in the October 2017.

TP left the meeting.

2. APOLOGIES

Apologies were received from Daniel Bellau, Philippa Chatterton, Paul Cliff, Simon Cox, Martin Kay, Julie Keefe, Daniel Okusaga, Anthony Robinson, Gary Thorpe and Tim Ward.

3. MINUTES OF LAST MEETING (13 March 2018)

The minutes were approved.

4. ISSUES FOR DISCUSSION

	ITEM	ACTION
a)	<p>QCA Corporate Governance Code published</p> <p>The Expert Group noted that the QCA Corporate Governance Code had been published.</p> <p>MT encouraged Expert Group members to advise their relevant clients to adopt the QCA Code.</p> <p>CA noted that a template article suitable for websites outlining the main features of the revised QCA Code had been circulated to Expert Group members and encouraged QCA advisory firm members to adapt and post as they saw fit.</p>	<p>ALL to encourage small and mid-size quoted company clients to adopt the QCA Corporate Governance Code.</p>
b)	<p>QCA/Peel Hunt Mid and Small-Cap Investor Survey results published</p> <p>The Expert Group noted that the QCA/Peel Hunt Mid and Small-Cap Investor Survey results had been published.</p> <p>MT highlighted that there were some interesting findings regarding MiFID II, as well as the Market Abuse Regulation and corporate governance.</p>	<p>None.</p>

c)	BEIS consultation – Insolvency and Corporate Governance This was not discussed.	None.
d)	Prospectus Regulation The Expert Group noted that ESMA had published an update of its Q&As – with a new answer on profit forecasts – as well as the first part of its Technical Advice (covering the areas of format and content of prospectus, the EU growth prospectus, and the scrutiny and approval of a prospectus). MT explained that he would ask some members of the Expert Group to review the Technical Advice to assess the extent to which QCA comments were taken into account.	None.
e)	Brexit This was not discussed.	None.

5. COMMUNICATIONS AND FUTURE MEETINGS

	ITEM	ACTION
a)	Policy Update (February 2018) This was tabled for information only and was not discussed.	None.
b)	Guest invitations to future meetings This was not discussed.	None.

6. ANY OTHER BUSINESS

The Expert Group noted the success of the Extraordinary Expert Group meeting held on Tuesday 17 April 2018 with Charles Marquand of 4 Stone Buildings who discussed the various models that may form the basis for the operation of financial services into and out of the UK following Brexit.

MT added that Charles had agreed to peer review any subsequent position papers produced by the QCA regarding Brexit and capital markets.

7. NEXT MEETING

Tuesday 17 July 2018, 9.00am – 10.30am, with the FCA Primary Markets team to discuss the implementation of the Market Abuse Regulation (Venue: Charles Russell Speechlys LLP, 5 Fleet Place, London, EC4M 7RD).