In The Supreme Court of Bermuda

COMMERCIAL JURISDICTION

2024: No. 201

IN THE MATTER OF HAFNIA LIMITED

AND IN THE MATTER OF SECTION 99 OF THE COMPANIES ACT 1981

Date of Hearing:	**19 September 2024**
Date of Judgment:	**19 September 2024**
Appearances:	**Rhys Williams, Conyers Dill & Pearman Limited for Petitioners**

RULING AND ORDER

JUDGMENT of Martin J

Introduction

1. This is an application to sanction a scheme of arrangement passed by a vote of the relevant class of ordinary shareholders of Hafnia Limited (hereafter "the Company") pursuant to the provisions of section 99 (2) of the Bermuda Companies Act 1981.

Background

2. The petition was presented on 13 September 2024 and is supported (i) by an affidavit of Pay Shu Zhen dated 26 July 2024 which was filed in support of the application to convene the scheme meeting and sets out the relevant terms of the proposed scheme of arrangement (hereafter "the Scheme") and (ii) by a further affidavit by Pay Shu Zhen dated 17 September 2024 exhibiting the Report of the Scheme Meeting Chairman which recorded the votes of the Scheme Meeting which was held on 11 September

2024, pursuant to the Order for Directions dated 5 August 2024. The petition for the court's sanction of the scheme came on for hearing this morning.

3. The essential purpose of the Scheme is to effect the "discontinuation" of the Company from Bermuda Companies' Register and the "continuation" of the Company as a company registered in Singapore.

Shareholder Approval

4. At the Scheme Meeting, which was convened properly and in accordance with the court's directions, the single class of common shareholders (the "Scheme Shareholders") who were in attendance at the meeting in person or by proxy or by authorised representative voted overwhelmingly in favour of the resolution to adopt the Scheme (98.74%), with less than 1.25% voting against it or abstaining. The Scheme was therefore approved by the requisite majority, and with over 70% participation of the total number of the ultimate shareholders represented.

Arrangement

5. This is not a case involving a compromise between the company and its shareholders or between the shareholders but is put forward as an "arrangement". Normally for a scheme of arrangement to be valid under this head, the arrangement must involve at least some "give and take"[1] between the shareholders and/or the Company.

6. Here the shareholders are not exchanging any shares or giving up any rights. If sanctioned, the Scheme Shareholders will remain shareholders of the same company, possessing exactly the same rights under the new Singapore constitution as they had before the Effective Date of the Scheme of Arrangement. Indeed, that is the very purpose of a "continuation" of a company from one jurisdiction to another.
7. This gives rise to a potential jurisdictional problem, because the court cannot sanction a scheme unless there is some material change in the rights of the shareholders after the scheme has taken effect: for without a material change, there is no "arrangement" to sanction. (This is a consideration which ought to be fully explored with the court on the application for leave to convene the scheme meeting.)

[1] Re Savoy Hotel Ltd [1981] 1 Ch 351 and Re Lehman Brothers International Europe (In Administration) (No2) [2018] EWHC 1980 Ch per Hildyard J at para 45

8. The only aspect of the Scheme which effects an "arrangement" between the shareholders within the meaning of that term is that the present bye laws of the Company will be replaced by a new Constitution governed by the laws of Singapore, which is in identical terms as the bye laws, save for minor terminological and consequential changes and revisions.

9. After some hesitation I have come to the conclusion that, in the present circumstances, the terms of the Scheme do amount to an "arrangement", albeit by a narrow margin. Although this has not been developed in any detail in the evidence, it is reasonable to infer that because the Company will be governed by another system of law (albeit a sister common law system) this change *may* give some different rights and remedies to the shareholders than they enjoy under Bermuda law, and the Company itself will also be subject to the internal laws of a different jurisdiction. This is the most that can be said to justify treating this as an "arrangement" whereby the rights of the Scheme Shareholders and/or the Company may be said to have been affected, if not materially altered.

10. On this slender ground I am satisfied that the adoption of a new constitution by the Company (which governs the relationships between the shareholders *inter se* and between the Company and its members) that is governed by a different legal system, and the consequence that following the registration in Singapore the Company itself will be subject to a different system of law, does amount to an "arrangement" within the wide meaning to be given to that term.

<u>Purpose</u>

11. I am satisfied that the reasons behind the decision to redomicile the Company are ones which "an intelligent an honest person acting in respect of his or her interest might reasonably approve" [2].

[2] Re National Bank Ltd [1966] 1 WLR 819,Re Lehman Brothers International (Europe) (In Administration) [2018] EWHC 1980 Ch per Hildyard J at paragraph 45.

Fairness

12. Counsel submitted that the Scheme Shareholders are the best judges of what is in their best commercial interests. This court does not express any view on the merits of the Scheme, which is not the court's function on an application such as this[3]. However, I am prepared to say that because the terms and conditions of the new Constitution are in reality the same as they were under the Company's former bye laws, the effect of the Scheme is fair to all Scheme Shareholders[4].

Legal effect

13. One of the conditions precedent to the effectiveness of the Scheme is that the statutory requirements under s 132H of the Bermuda Companies Act 1981 to "discontinue" from Bermuda will be complied with, so I am also satisfied that after the Scheme has been adopted and filed with the Registrar of Companies in Bermuda, the discontinuance will have legal effect in accordance with Bermuda law.

Litigation bar

14. However, there are a series of related provisions in the Scheme in paragraph 6 which purport to prevent any "person or entity, including without limitation, the Scheme Shareholders" from commencing, continuing, threatening, or procuring the commencement of any proceeding in connection with the Scheme.

15. This is an odd provision because, as a matter of Bermuda law, once the Scheme has become effective, it is binding on the Scheme Shareholders (ie all shareholders who are or were shareholders on the Effective Date), so such a term is on its face unnecessary. However, counsel persuaded me that there may be circumstances (albeit with a very remote likelihood) in which a Scheme Shareholder might wish to enforce the terms of the Scheme against the Company or other Scheme Shareholders, and so no modification to this provision is required.

[3] Re APP China Ltd [2003] Bda LR 50 per Kawaley J at 59
[4] This is so as to qualify the Scheme for exemption under s.3 (a) 10 of the US Securities Act 1933 USC 77.

16. As far as third parties are concerned, the Scheme cannot bind them, and any term of the Scheme that purports to do so is ineffective and should therefore not be included in the Scheme. It is hard to imagine what right a third party might have to pursue if they were not shareholders at the relevant date.

17. The scope of this wide and all-encompassing provision would clearly overreach the proper limits of this court's jurisdiction and competence. Counsel agreed that paragraph 6.1 of the Scheme will be modified to delete the words "no person or entity including without limitation" to remove this concern.

Modification and Approval

18. I therefore direct that the Scheme be modified to remove the words quoted above from paragraph 6.1 and I will sanction the Scheme thereafter.

Dated 19 September 2024

HON. MR. JUSTICE ANDREW MARTIN
PUISNE JUDGE OF THE SUPREME COURT