

JERSEY / JUDGMENT

# Representation by George Topco Limited [2012] JRC 059 (16 March 2012)

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## judgment

the bailiff: 1. This is an application by George Topco Limited which is incorporated in Jersey. It seeks approval of a scheme of arrangement between the company and certain of its shareholders pursuant to Article 125(2) of the Companies (Jersey) Law 1991 . 2. The details of the scheme are quite complicated but for our purposes they can be perhaps simplified as follows. The company is the ultimate parent company of Computer Patent Annuities Holdings Limited which, together with its subsidiaries, carries on a substantial business related to the computerised renewal of patents and other related matters. The company acquired its ownership of Computer Patent Annuities Holdings Limited by a scheme of arrangement in January 2010. The Board of the company has agreed the terms of a recommended proposal whereby Redtop Acquisitions Limited, another Jersey company, will acquire the entire issued share capital of the company. The scheme will in fact only apply to some 79.9% of these shares, and we will refer to these as the "scheme shares". These are the shares held by investors in the company and the scheme will involve a cash consideration of just under £334 million. The balance of the share capital, referred to as the "SPA shares", is held by persons concerned with the management and the intention is that they will receive part of their consideration in the form of shares in the purchaser, no doubt to incentivise them for the future. That aspect is proceeding by way of a direct sale of the SPA shares to the purchaser outside the scheme. Although the scheme shares comprise A1 ordinary shares, A2 ordinary shares and B ordinary shares there is no difference between these shares so far as their economic interest in the company is concerned and accordingly, at the convening hearing, the court ruled that there could simply be one meeting of all scheme shareholders; there was no need for separate class meetings. 3. In essence the scheme is simple. All of the scheme shares will be cancelled by way of a reduction of share capital; the company will then immediately issue an equivalent number of fully paid shares to the purchaser; the purchaser will, within five days of the scheme becoming effective, pay the holders of the scheme shares a total of £83.45 pence per share, of which £1 will be retained in escrow for a while, to cover certain potential liabilities to third parties. 4. Article 125 of the Law envisages three stages in approval of a scheme: first there is the convening by the court of a meeting of shareholders (or creditors if it is that type of scheme), at which the shareholders will consider the scheme. Secondly, there has to be a meeting of shareholders where the scheme must be approved by 75% of the voting rights

of those voting. Finally, the scheme is considered by the court which has to decide whether to approve it. In this case the court convened the necessary meeting by an order dated 26 th January, 2012, and that meeting was held on 22 nd February. So we are now at the third stage. 5. When considering whether to approve a scheme of arrangement under Article 125 the court's role is well established. The court must consider three issues:- (i) whether the provisions of the 1991 Law have been complied with; (ii) whether the class of shareholders to be affected by the proposed scheme was fairly represented by those who attended the meeting; and whether the statutory majority are acting bona fide and not coercing the minority in order to promote interest adverse to those of the class whom they purport to represent; and (iii) whether the arrangement is such that an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve. We will take each of these in turn. 6. We have received affidavits satisfying us that the scheme circular, which sets the matter out very fully, was sent to all the scheme shareholders; at the relevant meeting the holders of 95.94% of all scheme shares were present or represented by proxy; and the vote in favour of the scheme was unanimous. It follows that the provisions of Article 125 have been comfortably complied with. 7. As to the second issue there is only one class of shares, as we have mentioned, for these purposes and the vote was unanimous. Accordingly we are satisfied on the second aspect that there is no question of coercion of a minority. 8. That leaves the third issue. The circular explained the scheme very fully and fairly and it made clear that the Board had been seeking an exit for investors and the offer from the purchaser was the preferred one. The circular reports that the independent members of the Board have been advised by DC Advisory Partners that the price offered is fair and reasonable. The fact that the scheme was approved unanimously by over 90% of the scheme shares is also relevant. Having considered the matter in the round we are satisfied on this third issue. 9. We should however mention two matters which have been brought to our attention this morning and have required two minor changes to the scheme. There is provision in the scheme in the form in which it was sent to scheme shareholders which enables the company and the purchaser to consent to any modification or addition to the scheme or to any condition which the court may think fit to approve or impose. 10. The changes relate to two matters. The first is a minor error. There were some warrants which had been issued which enable members to subscribe for shares prior to the scheme becoming effective. There was a minor miscalculation of the number of warrants which meant that warrants had been issued for ten more shares than were authorised. This has been dealt with by the purchaser paying an additional £834 outside the scheme but it means that the aggregate figures in the scheme circular are reduced by £834. 11. The second change is that, as part of the overall deal, various preference shares are to be redeemed and in the circular it states that the foreign exchange price from euros to sterling which will form the basis of that redemption will be the exchange rate on the completion date. That was an error; it turns out to be impractical because the exchange rate will not be known in time for the payments to be made. Accordingly a change has been made so that the exchange rate will now be on the business day immediately prior to the completion date. 12. We have been referred by Mr McRae to the approach the court should take where there is a change to the scheme after the matter has been considered at the meeting of shareholders. He has referred us to a passage from Tolley's Company Law Service where, at section S 1002, it is stated as follows:-

"Where a member or creditor receives full information about the scheme and is given sufficient time to consider his position, the court will not generally interfere, except where a dishonest motive is apparent (Re English, Scottish and Australian Chartered bank

[1893] 3 Ch 385 ), or where class interests are not fairly represented. Full information must be made available, and the contents of the explanatory statement which must be issued are crucial in this respect. If a matter is not disclosed, then even in the absence of bad faith, if the court considers that shareholders' views in voting might have been affected had they known of it, the scheme is unlikely to be sanctioned (Re Jessel Trust Ltd [1985] BCLC 119; Re MB Group Ltd [1989] BCLC 672). In contrast however, non-disclosure of changes subsequent to the explanatory statement is not necessarily fatal. The role of the court is to be satisfied that no reasonable shareholder (or creditor) would change his decision as to how to act on the scheme if the changes had been disclosed and, if the court is so satisfied, then the scheme can still be sanctioned." 13. We are quite satisfied that the two changes we have just described are extremely minor and that, if they had been known about in advance and disclosed to shareholders, no shareholder could possibly have wanted to change his vote as a result of those changes. Accordingly we see no reason to change our view in relation to approval of the scheme by reason of those two matters. 14. Turning finally to the associated reduction in share capital, this is a very technical reduction. All the existing scheme shares will be cancelled but they will be immediately replaced by new shares; there will be no reduction in the assets of the company as a result. Accordingly we approve the reduction. The court in January ordered that the requirements under paragraph (3) - (5) of Article 62 to convene creditors be waived. 15. Finally we have been assured that all the conditions in relation to the scheme have been complied with; accordingly we are content to approve the scheme. Authorities Companies (Jersey) Law 1991. Tolley's Company Law Service. Page Last Updated: 04 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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