

JERSEY / JUDGMENT

Representation of Cape PLC

[2011] JRC 127 (30 June 2011)

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judgment

the deputy bailiff: 1. This is an application by Cape PLC, ("the company") which was incorporated in Jersey on 19 th April, 2011, for the Court's approval to the reduction of the company's share capital by cancelling an amount of £607,647,161 in the company's share premium account and crediting an equivalent amount to a reserve for profit to be used in future for distributions by way of dividend in accordance with the Companies (Jersey) Law 1991 and the company's articles and or other lawful purposes. The company also seeks other ancillary relief. The proposal has been well published to shareholders and arises out of a scheme of reorganisation by which the structure of which was the Cape Group was amended so as to move the holding company of the group from Cape PLC, a UK registered company, which I shall call 'Old Cape' to a Jersey company. 2. The Board of Old Cape considered this would place the group in the best position to facilitate the achievement of its growth aspirations. Ordinary shareholders in Old Cape received one ordinary share in the company for each share in Old Cape that was cancelled. The scheme was sanctioned by the High Court of England and Wales on 16 th June, 2011, and became effective the following day. It was always made plain to shareholders that the scheme would involve a reduction of share capital of the kind currently applied for. The evidence before us shows that adequate notice of this appeared in the offering circular and in the prospectus as Advocate MacRae has demonstrated, and indeed this is set out in paragraph 26 of Mr Bingham's affidavit where he describes the reduction of share capital which was voted on at a poll. 3. We are satisfied the reduction in share capital should be approved as it reflects what the shareholders believe to be in the interests of the company, the voting being that the holders of 73,740,366 Old Cape ordinary shares voted in favour of the resolution while the holders of 16,151 Old Cape ordinary shares voted against the resolution; a majority of 99.8% as against 0.02%. We are satisfied it reflects the interests of the shareholders. We have also reviewed the question of whether it damages the creditors of the company. The evidence before us is that we have no relatively significant creditors in the London Stock Exchange and Law Debenture Trust (in a personal capacity rather than as trustee). Both of those entities have written letters, albeit one curiously on the letterhead of the company, which confirm that they have no objection to the proposed reduction of capital and the remaining creditors total £6,500. The evidence before us shows that the aggregate of the company's capital account as at 27 th June, 2011, was £637,000,000 of which

£29,518, 686.50 is in the nominal share capital account. 4. We do not think our order today could possibly adversely affect the creditors and their consent is unnecessary for today's purposes. 5. We are asked to direct that Article 62(3) paragraphs 3-5 of the 1991 Law either shall not have effect or shall not apply. It is clear from authorities put before us by Mr MacRae that the Royal Court has taken different views of these paragraphs in two cases. In the case of the Representation of Wolseley PLC

[2011] JRC 007 , heard by Commissioner Clyde-Smith on 14 th January this year at paragraph 15, the Court said:- "15. We accepted Mr MacRae's submission that the reduction essentially involved an accounting entry - cancellation of share premium and credit to a reserve of profit

- the reduction itself does not involve a diminution of liability in respect of any amount unpaid on a share or the payment to a shareholder of any paid up capital. Any distribution to shareholders from the reserve of profit will require compliance with the provisions of Article 115 of the Companies Law in the ordinary way, including the making of a solvency statement.
16. On that basis, we agreed that, pursuant to Article 62(2) of the Companies Law, Article 62(3) - (5) would only apply if the Court were to direct that they should apply and we did not consider this to be a case where such a direction should be made." By contrast in the case of Vodafone Holdings Limited

[2011] JRC 030A , heard on 2 nd February before the Bailiff at paragraph 6, the Bailiff said this:- "6. This is a case where what is currently capital will be immediately distributable by way of dividend. It is arguable that paragraphs (3)-(5) of Article 62 of the 1991 Law would otherwise apply, but in the circumstances we are satisfied that there is no conceivable prejudice to creditors and therefore we direct that those paragraphs of Article 62 shall not apply." So a slightly different approach has been taken there. 6. The evidence before us is that the monies in the reserve of profit will likely be used for the payment of dividends to UK shareholders and others in due course and, in the circumstances that we are minded to direct that paragraphs 3-5 of Article 62 should not apply, I do not think it is necessary to resolve the competing approaches taken by Commissioner Clyde-Smith and the Bailiff, and I prefer to leave resolution of that difference to some future case when this point is significant. 7. In the circumstances we make the order in the following form. In view of the circumstances of the reduction that Article 62, paragraphs 3-5 of the 1991 Law shall not apply. We order pursuant to Article 63 of the 1991 Law that the amount standing to the credit of the Representor's share premium account as at 17 th June, 2011, namely £607,647,161 be cancelled and an equivalent amount be credited to a reserve of profit to be available to the Representor to be distributed from time to time as dividends in accordance with the Jersey Companies Law and the Representor's articles of association or applied from time to time towards any other lawful purpose to which such reserve may be applied. We order the Representor shall, as soon as reasonably practical, publish via a regulatory information service normally used to publish information about the Representor to the

public and shareholders a summary of the contents of this order. We have also had put before us a minute of the reduction of share capital which contains the information referred to in Article 64 of the 1991 Law and that is approved. Authorities Companies (Jersey) Law 1991. Representation of Wolseley PLC

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