

JERSEY / JUDGMENT

Representation of Regus Plc

[2016] JRC 233 (15 December 2016)

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judgment

the commissioner: 1. This Representation is brought on behalf of Regus Plc (the Company) and concerns the Company's application for the sanction of a scheme of arrangement dated 3 rd November, 2016, (the Scheme) proposed to be made between the Company and the holders of Scheme Shares (as defined in the Scheme) under Article 125 of the Companies (Jersey) Law 1991 (the Law). 2. The Company is a public limited company that was incorporated in Jersey on 8 th August, 2008. It is the ultimate holding company of the Regus group of companies, which is, we are told, the world's largest provider of flexible workspace solutions, with customers including some of the most successful entrepreneurs, individuals and multi-billion dollar corporations. The Company's network includes almost 3000 business centres, spanning nearly 900 cities across 120 countries. The Company's shares are admitted to the premium listing segment of the Official List of the Financial Conduct Authority (FCA) and to trading on the London Stock Exchange plc's (London Stock Exchange) main market for listed securities. The Company is a constituent member of the 'FTSE 250' share index. 3. This matter first came before the Court at a Directions Hearing on 27 th October, 2016, when the Court ordered, amongst other things, that the Company be at liberty to convene a meeting (the Court Meeting) of the holders of ordinary shares of 1p each in the capital of the Company (Old Regus Ordinary Shares) for the purpose of considering and, if thought fit, approving (with or without modification) the Scheme. Purpose of the Scheme 4. In summary, the Scheme is being proposed in order to facilitate the Company's intention to move the headquarters of the Company's group from Luxembourg to Switzerland by establishing a new holding company which is incorporated in Jersey and headquartered in Switzerland. 5. As the Company's group continues to develop worldwide, there has been an increasing presence of senior management located in Switzerland and the Regus group's financial control, treasury and procurement functions are all now run from Switzerland. 6. Further, there continues to be some medium to long term uncertainty surrounding the future shape of the European Union (EU) and in particular its increasingly complex legislative environment. As Switzerland is outside the EU, the Company's board considers that there may be advantages from being domiciled there. 7. The Company's board considered a number of options in determining how to establish its head office in Switzerland, including (a) "migrating" the Company to Switzerland and (b) establishing a new holding company as a Swiss-incorporated company. These options gave rise to a number of

complexities and disadvantages, including the need to comply with company legislation in two jurisdictions. The Company's board concluded the most straight-forward and advantageous option, which would protect shareholders' existing rights, was to establish its new holding company as a Jersey incorporated company. 8. The Company's board have decided to implement their proposals using a scheme of arrangement, a formal procedure under Article 125 of the Jersey Companies Law which is commonly used to carry out corporate reorganisations. It is an efficient means of effecting a share-for-share exchange. In recent years the Court has approved similar schemes of arrangement involving the establishment of new holding companies for WPP plc, Informa plc and Beazley plc. Effect of the Scheme 9. Pursuant to the Scheme, all members of the Company (Old Regus Ordinary Shareholders) will exchange their Old Regus Ordinary Shares for an equivalent number of ordinary shares of 1p each (IWG Ordinary Shares) to be issued by a public limited company incorporated under the laws of Jersey and headquartered in Switzerland (IWG). IWG was incorporated and registered in Jersey on 27 th September, 2016, as a private company limited by shares under the name of "Galena Holdings Limited". Pursuant to resolutions passed on 27 th October, 2016, IWG has changed its status to public company status and changed its name to "IWG plc". As a result of the Scheme, IWG will become the new parent company of the Regus group of companies. 10. IWG was established for the purposes contemplated by the Scheme and has no material assets or liabilities. The board of directors of the Company and the board of directors of IWG comprise the same individuals. 11. On the Scheme becoming effective, instead of Old Regus Ordinary Shares, Old Regus Ordinary Shareholders will hold IWG Ordinary Shares. The respective rights of shareholders will not be materially affected. 12. The Scheme is a "members' scheme" and the rights and interests of creditors of the Company are not directly affected. Structure of the Scheme 13. The Scheme will be effected as a 'transfer scheme'. This means that all of the Scheme Shares (as defined in the Scheme) will be transferred by the Scheme Shareholders (as defined in the Scheme) to IWG and, in consideration for the transfer of the Scheme Shares to IWG, IWG shall allot and issue to each Scheme Shareholder, for each Scheme Share previously held by that Scheme Shareholder, one IWG Ordinary Share credited as fully paid. The result is that the Company shall become a wholly-owned subsidiary of IWG and Scheme Shareholders will, in place of their Scheme Shares, receive IWG Ordinary Shares on a one-for-one basis. Capital Reduction 14. IWG Ordinary Shares will be issued by IWG at a price (we use that term in a non-technical sense) equivalent to the closing price of the Old Regus Ordinary Shares on the last day of dealings in those shares, so that as a result an amount approximately equivalent to the market capitalisation of Old Regus will be credited to IWG's share premium account. Following the Court meeting, an EGM would be held at which the Old Regus Ordinary Shareholders would, amongst other things, pass a resolution approving the reduction of capital of IWG, pursuant to which the entire amount standing to the credit of IWG's share premium account would be cancelled, with the resulting reserve being available to support the payment of future dividends and share re-purchases in the medium to long term. Statutory Framework 15. Article 125 of the Law provides: "(1) Where a compromise or arrangement is proposed between a company and its creditors, or a class of them, or between the company and its members, or a class of them, the court may on the application of the company or a creditor or member of it or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or

class of creditors, or of the members of the company or class of members (as the case may be), to be called in a manner as the court directs. (2) If a majority in number representing - (a) 3/4ths in value of the creditors or class of creditors; or (b) 3/4ths of the voting rights of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to a compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on - (i) all creditors or the class of creditors; or (ii) all the members or class of members, as the case may be and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company. (3) The court's order under paragraph (2) has no effect until the relevant Act of the court has been delivered to the registrar for registration; and the relevant Act of the court shall be annexed to every copy of the company's memorandum issued after the order has been made. (4) If a company fails to comply with paragraph (3), it is guilty of an offence." Legal Authorities re: Procedure in relation to the Scheme 16. There are three stages in the process by which a scheme of arrangement under Article 125 of the Law becomes binding on shareholders. 17. These are summarised in In the matter of Computer Patent Annuities Holdings Limited

[2010] JRC 011 cited with approval in In the matter of representation by Beazley PLC

[2016] JRC 109 : "(i) First, there is an application under Article 125(1) for an order that a meeting of shareholders or creditors if necessary be called. It is at this stage that the Court should consider whether or not to summon separate class meetings and if so, who should be summoned to each meeting. The Court will not look at the merits at this stage (Re Telewest Communications Plc [2004] EWHC 92). (ii) Second, the scheme proposals are put to the court-convened meeting and are approved by a majority by number representing 3/4ths of the voting rights of members present and voting in person or by proxy. ... (iii) Third, and assuming the requisite approval at such meeting is given, the Court exercises its discretion as to whether to sanction the arrangement: Re National Bank Ltd [1966] 1 All ER 1006 at 1012 (Bundle B, Tab 9) approved by the Royal Court in Re Telewest Finance (Jersey) Limited

[2004] JRC 109 (Bundle B, Tab 3)." 18. Stage 1 has taken place. In terms of Stage 2 the Court meeting took place on 5 th December, 2016, and the resolution to approve the Scheme was duly passed by the necessary statutory majority. 94.96% of shareholders by number (264 out of 278) who attended the meeting in person or by proxy voted in favour of the Scheme (14 shareholders by number voted against). Those shareholders voting in favour of the Scheme represented 99.19% (by value) of all the Old Regus Ordinary Shares voted at the meeting (being 702,584,836 out of a total of 708,317,246 Old Regus ordinary Shares voted). At the EGM held immediately following the Court meeting the resolution of the Old Regus Ordinary Shareholders approving the reduction of capital of IWG was also passed. 19. Turning to Stage 3, the Court has a discretion as to whether or not to sanction a scheme. In the case of members' schemes (as in the present case, as opposed to creditors' schemes) this discretion is for the overall protection of members, particularly those in the minority. 20. In In the matter of representation by Beazley PLC

[2016] JRC 109 the Court noted that the test which the Court must consider when determining whether to sanction a scheme of arrangement is well established. It is a three-fold test and the Court must consider: (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 interests 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." 21. The above test is based on the following statement in *Re National Bank Ltd* [1966] 1 All ER 1006 at 1012, [1966] 1 WLR 819 at 829 as approved by the Royal Court on several occasions: "In exercising its power of sanction the court will see, first, that the provisions of the statute have been complied with; secondly, that the class was fairly represented by those who attended the meeting and that the statutory majority are acting bona fide and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent, and thirdly, that the arrangement is such as an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve. The court does not sit merely to see that the majority are acting bona fide and thereupon to register the decision of the meeting; but at the same time the court will be slow to differ from the meeting, unless either the class has not been properly consulted, or the meeting has not considered the matter with a view to the interests of the class which it is empowered to bind, or some blot is found in the scheme." 22. The question before the Court today in deciding whether to exercise its discretion is therefore three-fold:

- (i) Were the provisions of the Law hereby complied with? 23. The Court has before it evidence that: (a) the Scheme Circular was properly served on shareholders in accordance with the Directions Order; (b) the Scheme Circular contained an explanatory statement prepared in accordance with Article 126 of the Law which provided shareholders with sufficient information in relation to the proposed Scheme; (c) the Court Meeting was duly convened and held in accordance with the Directions Order; and (d) the necessary resolution to approve the Scheme was duly passed by the necessary statutory majority. We are therefore satisfied that the provisions of the Law have been complied with. (ii) Was the class of shareholders to be affected by the proposed scheme fairly represented by those who attended the meeting and were the statutory majority acting bona fide and not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent? 24. In aggregate: (i) the shareholders attending the Court Meeting in person or by proxy, together, represented 76.57% of the aggregate issued share capital of the Company; and (ii) 278 out of the total 1,550 registered shareholders entitled to attend and vote at the Court Meeting attended the Court Meeting in person or by proxy. 25. The Scheme will affect all shareholders equally insofar as the proportionate interests of shareholders in IWG upon implementation of the Scheme will be the same as the proportionate interests of shareholders in the Company immediately prior to implementation of the Scheme. The

interests of all shareholders are therefore aligned and the shareholders who voted to approve the Scheme do not stand to benefit in some manner that is not available to those who did not vote. 26. No objection has been raised by any of the Company's shareholders and no member has attended the Court hearing. There is no suggestion that the views of the majority voting at the Court Meeting do not fairly represent the interests of those shareholders affected by the Scheme. There is also no evidence to suggest that the majority did not act bona fide, or that they achieved the statutory majority by coercing the minority. 27. In relation to overall turnout (being 76.57% of the shares by value and 17.94% out of registered holders by number), Commissioner Bailhache in Representation of Vallar plc

[2011] JRC 125 in a judgement delivered following a hearing to sanction a scheme of arrangement, noted (at paragraph 6): "It is true that the number of shareholders attending the Court meeting constituted only some 25% of those entitled to attend and vote but shareholder apathy is not uncommon. None of those absent shareholders has expressed any reservations about the proposed scheme of arrangement and we are accordingly entitled to assume that there are none. The scheme will affect all shareholders equally. In any event it is not for the Court to strain to find reasons why a scheme of arrangement should not be sanctioned." 28. On the facts presented in relation to this Representation, we draw the same conclusion. (iii) Is the Scheme an arrangement such as an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve? 29. We have set out the reasons for proposing the Scheme and an explanation of the Scheme and its effects have been supplied to the shareholders in accordance with Article 126 of the Law. 30. The board of directors of the Company (the composition of which includes a majority of independent non-executive directors) unanimously recommended that shareholders vote in favour of the Scheme. The reason for the recommendation are set out in Section 9 of the letter from the Chairman in Part 1 of the Scheme Circular. 31. There is no evidence to suggest that the statutory majority are not acting intelligently and honestly, or that they are not reasonably considering their own interests in coming to their conclusion. (iv) The fourth question - No "blot" on the Scheme 32. The test in *Re National Bank Ltd* (1966) All ER 1006 concentrates on the main three-fold test. In *Re: TDG plc* the English Courts separated the second paragraph quoted in *Re National Bank Ltd* to find a fourth element that must be considered by the English Court when requested to exercise its discretion to sanction a scheme of arrangement: that there must be no "blot" on the scheme. 33. Palmer's Company Law at paragraph 12.070 indicates that this additional consideration reflects the Court's discretion to consider the overall commercial and factual context of the proposed scheme, including any consequences of it. 34. In the present case, we find no "blot" on the Scheme and conclude that, on the basis of both established principle and on the facts, it is appropriate and justified for this Court to sanction the Scheme. 35. We therefore sanction the scheme and give the Order set out in the draft. Authorities Companies (Jersey) Law 1991. In the matter of Computer Patent Annuities Holdings Limited

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