

JERSEY / JUDGMENT

Representation of UBM Plc [2018] JRC 150 (22 August 2018)

[2018] JRC 150

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judgment

the deputy bailiff: 1. On 14 th June, 2018, this Court sanctioned a scheme of arrangement ("the scheme") pursuant to Article 125 of the Companies (Jersey) Law 1991 ("the Law") on the application of UBM Plc ("the Representer"). These are, in brief, our reasons. 2. The purpose of the scheme is to enable the acquisition of certain shares by Informa Plc ("Informa") in consideration for the payment to holders of those shares of new Informa shares and a cash payment ("the consideration"). 3. On 12 th March, 2018, the Court sat to give directions in connection with this application which provided, inter alia , the holding of a meeting of shareholders to approve the scheme. That meeting took place on 17 th April, 2018. 4. We had the benefit not only of the original supporting evidence prior to the hearing before the Court on 12 th March, 2018, but also further evidence including the affidavit of Gregory Lock of the 7 th June, 2018, reporting on what occurred at the meeting on 17 th April, 2018. 5. The Representer was incorporated on 3rd April, 2008, as a public limited company. We are told that it is the largest pure play B2B events business in the world owning and operating more than 300 exhibitions and events. Its customers are specialist business communities with trade shows and other events. Its shares are traded on the London Stock Exchange and are settled within the Crest system. 6. Informa is an international business intelligence, academic publishing, knowledge and events business. 7. In brief, the nature of the scheme is that Informa would acquire the "scheme shares" paying 1.083 new Informa shares and 163 pence in cash for each of the scheme shares. The scheme shares are the ordinary shares of UBM which, in essence, remain in issue at the time of the scheme record. If the scheme becomes effective all of the shares will be transferred to Informa and the scheme shareholders will receive consideration for each scheme share they hold for Informa. The authorised share capital of UBM is £121,712,474 divided into 1,081,888,657.78 ordinary shares of 11.25p each. Most of the scheme shareholders, with some exceptions, are entitled under the scheme to elect to vary the proportions in which they receive new Informa shares in cash under what is termed a "mix and match" facility. 8. The proposed acquisition by Informa of UBM is governed by the City Code on Takeovers and Mergers and is accordingly implemented under the supervision of the UK Panel on Takeovers and Mergers. 9. There are a number of conditions to the scheme which it is not necessary for us to set out in full, merely to confirm that they have been met. Those include, of course, the appropriate qualifying vote at the court meeting, the

passing of the necessary resolutions at the general meeting that followed immediately thereafter, and the receipt of a number of regulatory clearances in a number of jurisdictions including China, Germany, Turkey and the filing of necessary documentation within the United States relating to anti-trust provisions. There are also certain confirmations required from Informa. 10. As we have said, we received an affidavit from Mr Lock who confirms that the scheme was overwhelmingly approved at the court meeting. He confirms, firstly, that of the majority of scheme shareholders present and voting, either in person or by proxy, some 593 out of 619 were in favour representing a head count percentage of 95.80%. Further, 99.83% of the voting rights of the votes of the scheme shareholders present and voting either in person or by proxy were in favour of the motion. That equated to some 267,832,896 votes cast in favour and 446,090 votes cast against. 619 out of the total of 6,378 individual scheme shareholders voted and they represented some 68.07% of the total voting rights. 11. We also received, through counsel, the appropriate confirmations from Informa. The Law 12. Article 125 of the Law provides that: "125 Power of company to compromise with creditors and members

- (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 of 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." 13. The test to be applied by the Court in deciding whether or not to sanction a scheme of arrangement pursuant to Article 125 is set out in the judgment of this Court in *In the Matter of Computer Patent Annuities Holdings Limited*

[2010] JRC 021 in the following terms: "The Court's duty when considering applications under Article 125 was set out in the case of the *Representation of Andsberg Limited*

[2007] JLR N 53 and has also been repeated in *Re CI Traders Limited*

[2007] JRC 149A , where, although the case heard in 2007, the judgment has apparently only just been transcribed and published. The test is three-fold. 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." 14. This test was re-stated in *In the Matter of the Representation of Heritage Oil PLC*

[2014] JRC 175 , in which the Court noted (at paragraph 7) that it derives from the following statement in the English case of *In Re National Bank*

[1966] 1 ALL ER 1006: "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." 15. We were referred to a number of other authorities but we do not think it is necessary to set them out for the present purposes. 16. We were satisfied on the affidavit evidence before us including that of Mr Lock, and of Lisa Graham (an employee of the Representor's receiving agent) and that of Mr Julian Banks (who is the managing director of Stirling Financial Print Limited who dealt with the steps taken to dispatch documentation to scheme shareholders), that the provisions of the Law had been complied with. 17. We have already said that the result of the court meeting was a substantial majority in favour of the scheme and accordingly that the threshold is required by Article 125(2) of the Law has been met and exceeded. 18. We are satisfied that the notifications in the meetings were procedurally fair and that the Court meeting was conducted in an open and fair manner. Furthermore, we were satisfied that the scheme was such that an intelligent and honest man, a member of the class concerned and acting in respect of his interest might reasonably approve. 19. We note that no-one appeared before us to argue against the scheme. 20. For those reasons we were satisfied with the application before us and we sanctioned the scheme. *Authorities Companies (Jersey) Law 1991. In the Matter of Computer Patent Annuities Holdings Limited*

[2010] JRC 021 In the Matter of the Representation of Heritage Oil PLC

[2014] JRC 175 In Re National Bank [1966] 1 ALL ER Page Last Updated: 28 Aug 2018 BAILII:
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