

Cayman Court reaffirms requirements for sanctioning a scheme of arrangement

UPDATE

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In a judgment considering a scheme to delist and privatise a company, the Grand Court of the Cayman Islands has reaffirmed the matters that will be considered by the Court when determining whether to sanction a scheme of arrangement. The decision serves as a helpful reminder of the requirements for sanctioning a scheme of arrangement in the Cayman Islands.

Background

In the *ex tempore* judgment of Kawaley J in *In the Matter of Jiangnan Group Limited* (unreported, 16 May 2023), the Grand Court of the Cayman Islands sanctioned a scheme of arrangement relating to Jiangnan Group Limited (the **Company**), a Cayman Islands exempted company.

The purpose of the scheme was to privatise and de-list the Company from the Hong Kong Stock Exchange. The scheme's explanatory statement included supporting letters from the Company's board of directors, the independent board committee and the independent financial advisor, all stating that the proposal was '*one which appeared to be a reasonable one for Scheme Shareholders to approve*'. The scheme was approved by 95 per cent of those voting and 63 per cent of the total number of shareholders who could vote on the scheme.

The principles

Kawaley J considered the matters that the Court has to be satisfied of in granting the sanction of a scheme of arrangement and referred to the principles set out by Doyle J, in *In the Matter of Bestway Global* (unreported, 7 October 2021):

1. The scheme of arrangement must be 'a compromise or arrangement' within the meaning of section 86 of the Companies Act.
2. The scheme document must provide all the material information reasonably required to enable a scheme shareholder to come to an informed decision on the merits of the scheme.
3. The Court meeting must be held properly and the statutory majorities achieved.
4. There must be no reason to believe that the views of the majority who voted in favour of the scheme did not fairly represent the views of the scheme shareholders as a whole, or that they were not acting *bona fide* or subject to coercion.
5. The scheme of arrangement must be fair and an intelligent and honest person acting in respect of their interest might reasonably approve of the scheme of arrangement.
6. There must be no good reason for the Court to exercise its discretion not to sanction the scheme. The Court will have regard to the following principles when considering whether there is a good reason for the Court to exercise its discretion not to sanction a scheme (referred to in the somewhat different context of a banking business transfer scheme approval hearing, by Snowden J in *Barclays Bank Plc* [2019] EWHC 129 (Ch)):
 - (i) Whether in exercising its discretion, the Court has given due recognition to the commercial judgment of the directors of the relevant company.

- (ii) Whether any interested persons will be adversely affected by the scheme.
- (iii) Whether any relevant regulatory body, having the necessary material and expertise, has expressed an opinion that investors are likely to be adversely affected by the scheme.
- (iv) Whether the scheme as a whole is fair between the classes of persons affected.

In considering these factors the Court is not attempting to produce the best possible scheme and will leave the scheme details to the discretion of the directors of the company, provided the scheme as a whole is found to be fair.

It would be interesting to see how the Cayman Courts would react to any challenge to a scheme, on the basis that there is a ground (6) 'good reason' for the Court *not* to exercise its discretion to sanction a scheme. There is some tension between the benefits of maintaining a clear and predictable set of principles to be applied in each case, and allowing a residual, ground (6) discretion. There is also a question as to the applicability of principles relating to business transfer schemes to a Cayman scheme of arrangement case.

Conclusion

This judgment helpfully reaffirms the considerations the Court will have in mind when sanctioning a scheme of arrangement. Any party seeking the sanction of a scheme of arrangement in the Cayman Islands should bear in mind this helpful guidance provided by Doyle J in *Bestway Global* and reaffirmed by Kawaley J in *Jiangnan Group Limited*.

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