

6-97
1 OPEN COURT

2
3 IN THE GRAND COURT OF THE CAYMAN ISLANDS

4
5 CAUSE NO. 309 OF 1997



16-12-97

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11 IN THE MATTER OF THE COMPANIES LAW (1995 REVISION)

12
13 AND IN THE MATTER OF THE TRUSTS LAW (1996 REVISION)

14
15 AND IN THE MATTER OF **CHEMICAL INTERNATIONAL TRUST**
16 **CORPORATION LIMITED**

17
18 AND IN THE MATTER OF CHASE MANHATTAN TRUST CAYMAN LTD.

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24 APPEARANCE:

25 Miki Jafa and Nick Joseph of Hunter and Hunter for the Applicants.
26

27
28 RULING
29

30 I have before me an application which seeks, primarily, the sanction by the
31 Court of a scheme of arrangement for the merger or amalgamation of the
32 two companies intituled in this action ("the applicant companies"). The
33 application is brought by way of petition jointly on behalf of the applicant
34 companies pursuant to section 86 of the Companies Law (1995 Revision),
35 ("the Law").
36

1 Both applicant company's are Cayman Islands subsidiaries or affiliates
2 respectively of Chemical Banking Corporation and Chase Manhattan
3 Corporation, very large and well-known banking institutions which operate
4 world-wide and which are headquartered in the United States.

5

6 In a widely-publicised take-over, Chemical Banking Corporation has
7 acquired Chase Manhattan Corporation to form, by merger, one of, if not
8 the largest, banking and trust management groups in the world.

9

10 The fact of that merger predicated the merger in Cayman of the applicant
11 companies.

12

13 The present petition, in seeking the Court's sanction seeks, in effect, to
14 obtain the several benefits of section 86 of the Law by means of that
15 sanction.

16

17 Not least among those benefits, is the automatic transfer to the transferee
18 company of the whole of the undertaking, property and liabilities of the
19 transferor company without the need for formal negotiations and
20 arrangements being entered into with third parties who would be affected -
21 such as creditors, shareholders, service providers and so on.

22

23 Subject to notice of the intended petitions being given to any such third
24 parties, leave had been earlier granted to bring this joint application on by
25 petition.

1 A further immediate benefit of the court's sanction pursuant to section 86
2 would be, in this case, the dissolution, without the need for winding-up
3 proceedings, of the transferor company. That, of the applicant companies
4 will be Chemical International Trust Corporation Limited. This result
5 although in light of the ultimate take over of the Chase Group by the
6 Chemical Group might seem anomalous, is explicable against the
7 background that the Chase Group enjoys better goodwill world-wide and
8 this the continuation of the Chase name for the merged entity in Cayman.

9
10 The principal undertaking of each applicant company has been that of
11 corporate trustee. Each has served as trustee for a number of trusts settled
12 by clients from many parts of the world.

13
14 It is intended by the applicant companies therefore that the sanction of the
15 merger will serve also to sanction the transfer of the duties and liabilities of
16 trustee. However as the Law in section 86 speaks of sanctioning the
17 transfer of "liabilities" and not specifically of "duties", Miss Jafa seeks
18 specific directions for the bringing of a separate application under section
19 10 of the Trusts Law (1996 Revision), for an order of the court appointing
20 the transferee company as trustee in substitution for the transferor company.
21 That will serve to cover all aspects of the respective liabilities, rights and
22 duties attaching to the office of trustee.

23
24 Those directions are given and that application will follow immediately on
25 the hearing of this petition, in Chambers.

1 I also have note the decision earlier pronounced sanction the merger of the
2 applicant companies pursuant to section 86 of the Law.

3

4 **MINUTE OF ORDER AFTER APPLICATION PURSUANT TO**
5 **SECTION 10 OF THE TRUSTS LAW (1996 REVISION)**

6

7

(TAKEN IN CHAMBERS)

8

9

10 Being satisfied that it is expedient and in the interest of the better
11 management and conservation of the assets of the respective trusts under
12 this trusteeship of Chemical International - because of the difficulties which
13 would otherwise follow - I direct that individual applications not be made in
14 each of them for the transfer of the trusteeship to Chase Cayman as the
15 newly merged entity. Accordingly I grant the formal order in terms as
16 amended under section 10 of the Trusts Law (1996 Revision) for the
17 appointment of Chase Cayman as Trustee respectively in each Trust.

18

19 The foregoing order is best read in the context of section 10 subsection (1)
20 itself. As I am told that this may be the first time such an application is
21 being made under this section I set it out here for reference:

22

23 “10(1) The Court may, whenever it is expedient to
24 appoint a new trustee or trustees, and it is found
25 inexpedient, difficult or impracticable so to do
26 without the assistance of the court, make an order
27 appointing a new trustee or trustees either in
28 substitution for or in addition to any existing

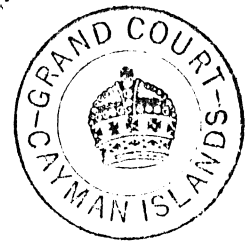
1 trustee or trustees or although there is no existing
2 trustee.”

3
4 The evidence of Mr. Worsley filed therein demonstrates that the several
5 trusts which remained with Chemical International as Trustee provided at
6 least four categories of procedures for the removal and replacement of
7 trustees, any of which, if literally employed, would have resulted in
8 considerable expense to the respective trust funds.

9
10 Having regard to the fact that the merger has been so widely publicised and
11 the indubitable qualities and abilities of the transferee company as trustee
12 and, as well, to the fact that no objections whatsoever have been raised by
13 any person interested following on the giving of notice as earlier directed in
14 the context of the applications under section 85 and 86 of the Companies
15 Law, the case is one which presented itself as particularly suited to the
16 exercise of the discretion vested by section 10(1) of the Trusts Law.

17
18 Hence the orders first set out above, which I now direct are to be formally
19 presented for signature and filing.

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22
23 Anthony Smellie
24 JUDGE OF THE GRAND COURT



25 Dated this 16th day of December 1997