

28/5/10

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Hon Mr Justice Andrew J. Jones QC

In Chambers, 28<sup>th</sup> May 2010



Cause No.134 of 2010 (AJJ)

IN THE MATTER of the Companies Law (2009 Revision)

AND IN THE MATTER of AZALEA NETWORKS

Appearances: Fraser Hughes, C.D & P, on behalf of Azalea Newtworks ("the Company")

Caroline Moran, M&C on behalf of Aruba Networks Inc ("Aruba")

#### RULING

1. The Company has presented a petition for an order to sanction a scheme of arrangement. The purpose and effect of the proposed scheme is that the Company will be taken over by Aruba. Put simply, the Company's shareholders will transfer their shares to Aruba inconsideration of the issue to them of shares in Aruba. Similarly, the holders of convertible promissory notes issues by the Company will be cancelled in consideration of a cash payment and shares issued by Aruba. The Petition has annexed to it a draft of the proposed scheme of arrangement, but the parties' management are still working on the explanatory memorandum with the result that the Company is not yet in a position to make application to the Court for an order to convene the scheme meetings. In the meantime the Company has asked the Court to direct whether or not it needs to prepare dual language scheme documentation. The Company's principal place of business is in California, but approximately 36% of its registered shareholders are resident in Taiwan or the Peoples Republic of China.
2. Given that most of the companies incorporated in this jurisdiction are owned by foreigners and carry on their businesses elsewhere, this issue must arise quite often. As a practical matter, those advising companies which make applications to the Court pursuant to various different provisions of the Companies Law have to make judgment calls about the need to prepare and


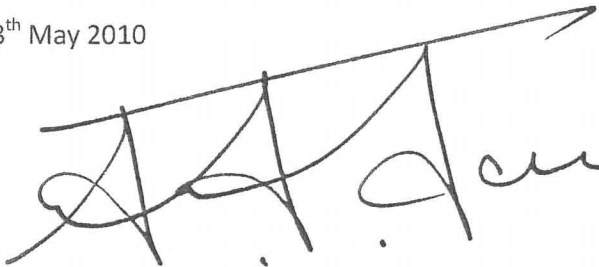
publish court documents in languages other than English. The fact that neither the Grand Court Rules Committee nor the Chief Justice have seen fit to make any rules or practice directions on this subject tends to suggest that most practitioners are getting it right most of the time. Nevertheless, the point having been raised in this case, I think that I should give a direction and explain my reasons for doing so.

3. The Court has a statutory jurisdiction under the Companies Law to make orders of various kinds which are binding not only on the company itself, but also upon its shareholders, creditors and others. The applications most commonly made to this Court are for orders that companies be wound up, orders sanctioning schemes of arrangement and orders approving capital reductions. All such applications are required to be made by petition, in respect of which any interested party is entitled to be heard. It follows that petitions are normally required to be advertised; the hearing will take place in open court; and any interested party will be entitled to obtain a copy of the documentation on the Court file. In the case of winding up petitions and capital reductions, notice of the hearing is normally advertised in one or more newspapers. In the case of schemes of arrangement, notice of the hearing is normally contained in the scheme documentation, thus eliminating the need for newspaper advertisements. Whenever a company is owned by non-English speaking shareholders and carries on business in a non-English speaking country, the question arises whether dual language documentation should be prepared and whether advertisements should be published in foreign language newspapers.
4. It is sometimes said that English is the universal language of business. Whether or not this is true, whenever a company incorporated in the Cayman Islands has in fact conducted its business in such a way that its shareholders and creditors have a legitimate expectation that documentation which is important to them as a class will be published by the company in a foreign language (in addition to English), the documents relating to any application to Court which will affect the class should also be made available to them in that foreign language. For example, if, in the ordinary course of business, a company has routinely published dual language directors' reports and audited financial statements (or even multi-language versions), the Court will normally require that the documentation relating to a scheme of arrangement or capital reduction will be published in the same way, unless it is satisfied that there is some good reason not to do so. The purpose and intention of the rules which require petitions to be advertised is that all those having an interest in the outcome of the matter should be put on notice and have an opportunity to be heard. If a company has conducted its affairs in such a way that its shareholders and creditors would have a legitimate expectation that a foreign language version of the Court documentation will be available and that any advertisements will be published in a foreign language newspaper, the failure to do so would tend to defeat the purpose of the rules.
5. Although about 36% of the Company's registered shareholders are residents of Taiwan or the Peoples' Republic of China, the evidence of Mr Felix Zhao, its co-chief executive officer, is that the Company's affairs have always been conducted in English only. He says that its shareholder

meetings' have been conducted in English only; communications with shareholders are written in English only; and directors' reports and financial statement are presented in English only. It follows that the Scheme Shareholders and the Bridge Noteholders (as defined in the scheme of arrangement) cannot be said to have any legitimate expectation that the Company will publish dual language scheme documentation.

6. For this reason I direct that the scheme documentation should be prepared in English only.

28<sup>th</sup> May 2010

The seal of the Grand Court of the Cayman Islands is circular. It features a crown in the center, with the words "GRAND COURT" at the top and "CAYMAN ISLANDS" at the bottom.

Hon. Mr Justice Andrew J. Jones QC