



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 38 OF 2012 (PCJ)

1-6-12

The Hon Sir Peter Cresswell
29 May 2012

IN THE MATTER OF SECTIONS 15 & 86 OF THE COMPANIES LAW (2011
REVISION)

AND IN THE MATTER OF ALIBABA.COM LIMITED

APPEARANCES: Mr. Jayson Wood and Ms. Joanne Collett of Appleby for Alibaba.com
Limited

RULING

This is the hearing of a Summons for Directions in relation to an Amended Petition issued by Alibaba.com Limited ("the Company") seeking confirmation under Section 15 of the Companies Law (2011 Revision) of a Special Resolution by the shareholders of the Company to reduce its share capital.

The Amended Petition is listed for hearing on 15 June 2012.

I refer to my Ruling herein dated 20 April 2012.

In the third paragraph of that Ruling I recorded that the Summons then before the Court raised among other matters the question how to decide whether the "double-majority" mandated by Section 86 of the Companies Law has been achieved for the purposes of a Scheme of Arrangement between a company and its shareholders.

For completeness I record that on 14 May 2012 (following further application) I amended paragraph 6 of the Order of 20 April 2012 to read "To the extent that the shares to which the proposed Scheme relates are registered in the name of one or more custodians or clearing houses or HKSCC Nominees Limited ("HKSCC Nominees"): (a) such custodian or clearing house or HKSCC Nominees may cast votes both for and against the proposed Scheme in accordance with the instructions of its clients; and (b) such custodian or clearing house or HKSCC Nominees shall specify the number of votes cast in favour of the Scheme and the number of clients or members on whose instructions they are cast and the number of votes cast against the Scheme and the number clients or members upon whose instructions they are cast."

The Court Meeting for approval of the Scheme of Arrangement was convened immediately prior to the EGM on 25 May. At the Court Meeting the Scheme was approved and for the "head count test" a majority in number was achieved under both the traditional approach and the Little Sheep approach (both as described in my Ruling of 24 April).


It follows that the issues raised as set out in my Ruling of the 20 April as to the "majority in number" Count are unlikely to be the subject of further consideration in this case as on both approaches the requisite majority was achieved.

Nevertheless I consider that the issues raised in my Ruling as to how to decide whether the "double majority" mandated by Section 86 of the Companies Law has been achieved for the purposes of a Scheme of Arrangement between a company and its shareholders are of considerable importance. I draw attention to (a) the number of Schemes of Arrangement which come before the Grand Court and (b) to the contention of Counsel that the approach of the Grand Court as set out in Practice Direction 2/2010 is inconsistent with the traditional approach of the courts in all common law jurisdictions to the whether the "double majority" has been achieved in circumstances where a custodian is instructed to vote some shares in favour of a Scheme, and others against (see page 11 and following of my Ruling). In the light of my Ruling of 20 April 2012 the opportunity might be taken (if thought appropriate) to confirm or re-consider PD 2/2010.

I have given directions in relation to the Petition in the terms of the draft order which I have initialled today.

I order accordingly.

DATED this 1st day of June 2012


The Honourable Justice Creswell
Judge of the Grand Court

