

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Cause No. FSD 149 of 2014

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)
AND IN THE MATTER OF CHARM COMMUNICATIONS INC.

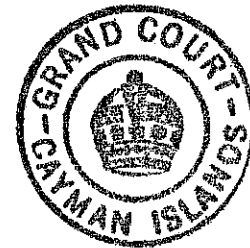
Appearances: Mr. Mark Phillips QC, instructed by Mr. Barnaby Gowrie
and Mr. Niall Hanna of Walkers for the Petitioner

Mr. Jan Golaszewski and Mr. Robert True of Carey Olsen
for the Dissenting Shareholder Aegis Media Pacific Limited

Before: Hon. Justice Mangatal

Heard: February 19 & 26, 2015

Delivered: As an ORAL RULING in Chambers

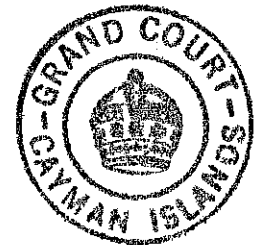


ORAL RULING

1. The application before me is a Summons for directions in which the majority of the directions for this matter have been agreed by the parties. There are really 3 main areas of disagreement which I shall turn to shortly.

2. This matter concerns a Petition filed pursuant to Section 238 of the *Companies Law* (2013 Revision) (the “*Law*”) which deals with, amongst other matters, a dissenting shareholder’s right to be paid the fair value of his shares. The Company has filed a Petition pursuant to Section 238 (9) of the *Law* and it will be for the Court at the trial or substantive hearing of this matter to make a determination as to the fair value of the shares of all dissenting members. In this case there is one dissenting shareholder; Aegis Media Pacific Ltd. (“Aegis”).

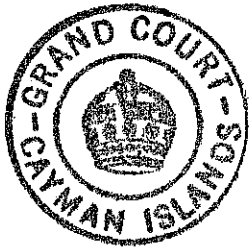
3. Counsel on both sides have indicated that the Section 238 provision was introduced into Law here in Cayman relatively recently and there are no decided local cases relative to this section. There is a matter in respect of which certain directions orders were made in another proceeding currently before the Grand Court, i.e. FSD 92 of 2014 (AJJ) in the matter of *Integra Group*, which involves Section 238 proceedings. I accept Counsel for Aegis’ submission that the directions given in that case, or indeed another case are not to be regarded as precedents. Indeed, I have not regarded those directions as anything more than useful in a general way. Further, learned Queen’s Counsel Mr. Phillips, Counsel for the Petitioner, also appears in the *Integra* matter. He candidly conceded that, for example, there was no issue taken in that case about an order in respect of communications such as the Order being sought here at paragraph 8. What this court must do in my judgment is to simply make appropriate directions that accord with the overriding objective of dealing with cases in a just, expeditious and economical way.



4. The first area of disagreement relates to paragraph 7 of the Order. The Petitioner proposes that a meeting be held at its offices in Beijing at which appropriate members of its management team will seek to assist the experts to understand matters which are not clear to them. It is the Petitioner's position that it should be enabled to identify appropriate members of its management team who it considers best able to deal with such queries, which queries ought to have been notified to the Petitioner in advance.

5. Aegis on the other hand does not want the individuals who meet with the experts to be mandated by the Petitioner or be limited to current members of the Petitioner's Management team. They wish the experts to be allowed to meet former members of the Petitioner's Board, who for example, were on the board at the time when the merger was considered, but who are no longer on the Board. The Petitioner also seeks that the meetings take place in Beijing because it says that is the location of its business, it is where its information is located and most of its management and staff work there. Aegis, on the other hand wants the meetings to take place at a mutually convenient place, not necessarily in Beijing, in the event that some current, or particularly, former members of the Petitioner's management team may not be currently located in Beijing.

6. In my view, the Petitioner is correct that the scope of this order is to allow for meetings to enable the experts to understand the underlying material. It is therefore primarily for the Petitioners to identify appropriate members of its management team to deal with queries that the experts may have. I agree that there isn't in our dispensation ordinarily a power

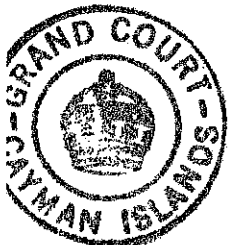


to direct that a party procures specific individuals to attend a meeting to answer questions in person.

7. However, I think it would be appropriate to allow the experts to together meet with other members of the Petitioner's current management team or former members, if they see it as necessary, so that as much relevant information as it is possible to glean can be obtained. Further, if those persons are located outside of Beijing, I see no problem in making paragraph 7 of the Order somewhat wider, to incorporate these views.

8. The largest area of disagreement seems to be concerned with paragraph 8 of the Summons and concerns disclosure of communications with experts. I agree with Counsel for Aegis' submission that there is nothing in the *Grand Court Rules* Order 38, rules 35 to 43 or in the Financial Services Division Guide concerning expert evidence (pages 31 – 35), that, whilst concerned with expert evidence, speak to disclosure of communications between a party and/or its attorneys and its expert. The *Grand Court Rules* do not presently have the arguably sweeping type of procedural changes that exist in part 35 of the *English Civil Procedure Rules*, relative to questions of privilege and experts.

9. I accept as helpful learned Q.C. Phillips' submission and reference to the case of *O'Neil and another v. Philips* [1997] 1 W.L.R. 192 -, specifically the paragraph on page 10 of 11, where Lord Hoffman stated that the offer should provide for equality of arms between the parties and both should have the same right of access to information about the company. However, it should be noted that in that case the value, if not agreed, was to be

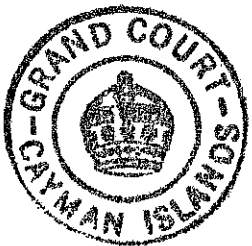


determined by a competent expert, and it was one sole expert that the parties were agreeing to. In contrast, the instant case is not one in which it is agreed that the court is to be provided with a report from a jointly approved expert.

10. Having regard to the terms of Section 238 and the fact that the sole discreet issue is a matter for the Court, i.e. to determine a fair value of the dissenting shareholder's shares, in the circumstances the appointment of the experts for each party, seems more consistent with excluding the order sought by the Petitioner at paragraph 8, and making simply the more standard form of directions set out at paragraph 15 – pages 29 – 30 of the Financial Services Division Guide.

11. The Petitioner seeks a July trial date whereas Aegis wants a trial date after September 7, 2015. The last remaining issue is this one. I appreciate that this is a commercial, financial matter and it ought to be dealt with as expeditiously as possible. However, amongst the matters that I have taken into account are the following: -

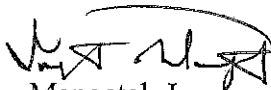
- (a) there have been few previous cases of this kind;
- (b) the Petitioner has indeed been able to continue getting on with the running of its business, and what remains is the resolution of the payment of a fair price to Aegis for its shares;
- (c) the difference in timing proposed for trial is not substantial - 6 weeks, and in any event, there remains much work to be done, particularly by the experts.



(d) The experience in the *Integra Group* matter, in terms of the length of time it is taking to pass through the Court, is instructive. Mr. Gowrie sought to argue that the length of time in that case was understandable since it was the first case of its kind, whereas in this case the time should not need to be as long. However, the instant case is also one of the early cases, and it could not in any event be considered at this stage a routine Financial Services Division case that can be dealt with short shrift.

12. It would not in my view be reasonable or proportionate for me in the circumstances to set a trial date inconvenient to the Attorneys for the dissenting shareholders, attorneys of its choice, at this stage and in these circumstances. The matter should therefore be fixed for trial during the week of the 7 September 2015.
13. I therefore make the orders in terms that I shall read out.

Dated this 26th day of February, 2015


Mangatal, J.
Judge of the Grand Court

