

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

**CAUSE NO. FSD 34 OF 2017
(NSJ)**

IN THE MATTER OF SECTION 86 OF THE COMPANIES LAW (2016 REVISION)

AND IN THE MATTER OF UNI-ASIA HOLDINGS LIMITED

IN CHAMBERS (BY TELECONFERENCE)

Appearances: Anna Perry of Maples and Calder for the Petitioner
Caroline Moran
Adrian Davey

Before: The Honourable Justice Segal

Heard: 28 March 2017

Draft Judgment Circulated: 16 May 2017

Judgment Delivered to Counsel: 16 May 2017

Released for Publication: 16 May 2017

HEADNOTE

**Section 86 of the Companies Law (2016 Revision) – shareholders’ scheme of arrangement – application
for an order for permission to convene a meeting of shareholders – paragraph 3 of the
Practice Direction No. 2 of 2010**

JUDGMENT ON CONVENING HEARING

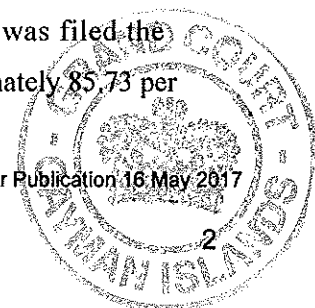


Introduction

1. On 28 March I heard an application by Uni-Asia Holdings Limited (the **Petitioner**), by its summons dated 13 February 2017, for an order that it be at liberty to convene on 28 April 2017 a single meeting (the **Court Meeting**) of its ordinary shareholders, pursuant to section 86 of the Companies Law (2016 Revision) (as amended) (the **Companies Law**), for the purpose of considering and, if thought fit, approving (with or without modification) the proposed scheme of arrangement (the **Scheme**) between the Petitioner and its ordinary shareholders (the **Scheme Shareholders**). At the hearing I requested that some amendments be made to the scheme documentation and the form of order convening the meeting of the Scheme Shareholders (the **Order**). Following the hearing I reviewed and approved the amendments and issued the Order. The hearing was recorded and a transcript has been prepared. But for the sake of completeness I have prepared this judgment to record briefly the issues that arose during the hearing and my reasons for making the Order.

The Scheme in outline

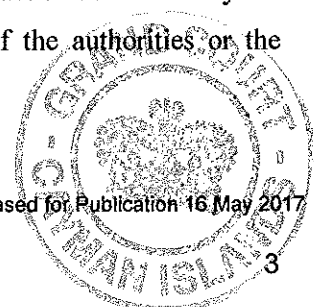
2. The Scheme is a migration (sometimes also known as a relocation) scheme . The principal object of the Scheme is to change the jurisdiction of incorporation of the ultimate holding company of the Uni-Asia group (the **Group**) from the Cayman Islands to Singapore and for the Petitioner to become wholly owned by Uni-Asia Group Pte. Limited (**NewCo**), currently a new subsidiary of the Petitioner that has been incorporated under the laws of Singapore for the purposes of this Scheme.
3. Pursuant to the Scheme, all of the shares held by the Scheme Shareholders (the **Scheme Shares**) on the "Books Closure Date" (expected to be 5.00 pm on 25 May 2017, Singapore time) will be transferred to NewCo. In return, the Scheme Shareholders will receive shares in NewCo (the **NewCo Shares**) on a one-for-one basis. Following such transfer, the Petitioner will withdraw its listing on the Singapore Stock Exchange and trading of the NewCo Shares on the Singapore Stock Exchange is expected to commence at 9.00 a.m. on 2 June 2017 (Singapore time).
4. As at the date on which the evidence in support of the Petitioner's summons was filed the largest majority of the Petitioner's issued shares (40,273,030 shares) (approximately 85.73 per



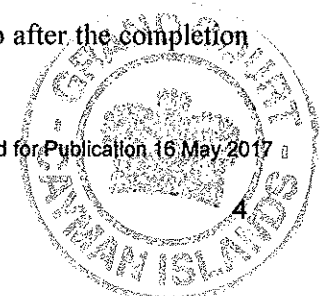
cent.) were registered in the name of the Central Depository (Pte) Limited, as depository (**CDP**). CDP is incorporated in Singapore and acts as a common nominee, holding securities on behalf of depositors (**Depositors**) who have shares in the Petitioner entered against their names in the register maintained by CDP in respect of book-entry securities (the **Depository Register**). Of the other registered holders of the Petitioner's issued shares:

- (a). approximately 9.98% is held by a company incorporated in Panama;
- (b). approximately 2.66% is held by a company incorporated in Germany; and
- (c). approximately 1.64% is held by a company incorporated in Japan.

5. As is usual in cases where shares are held through a depository and custodian, and the beneficial owners hold the shares indirectly, the Petitioner wishes to enfranchise the Depositors by using a voting mechanism that allows Depositors to exercise the power to vote on the Scheme which voting right is, as a matter of law, vested in the registered holder of the shares. In a case where, as here, the shares are registered in the name of the depository (CDP) it is the depository who has the right to vote at the Court Meeting and the depository must give proxies to the Depositors in order to allow them to make the decision and exercise the depository's right to vote on the Scheme. This approach and practice which involves "looking through the register" is approved both by authority and the Practice Direction No. 2 of 2010 (the **Practice Direction**) – see paragraph 4 of the Practice Direction. The Petitioner sought an order (following the judgment of Jones J in *Re Little Sheep Group Limited* [2012] (1) CILR 34 which was itself followed by Cresswell J in *Re Alibaba.com Limited* [2012] (1) CILR 272) that for the purpose of calculating the majority in number of those voting on the Scheme (and deciding whether the numerosity requirement contained in section 86(2) of the Companies Law had been satisfied) CPD be treated as a "multi-headed shareholder" so that each Depositor who votes in favour of or against the Scheme shall be treated as a separate shareholder (and CPD shall not be so counted). I indicated at the hearing that I was content to follow these decisions and the practice sanctioned by the Practice Direction without the need to conduct my own detailed review of the authorities or the analysis on which they are based..



6. On the same day and at the same venue as the Court Meeting, the Company will hold an annual general meeting (AGM) and an extraordinary general meeting (EGM). It is intended that the AGM will be held prior to the Court Meeting and that the EGM will be held following the conclusion of the Court Meeting.
7. In summary, the actions to be approved at the EGM include the adoption of:
 - (a). a NewCo Performance Share Plan, the terms and conditions of which comply with the relevant requirements of the Singapore Stock Exchange for share schemes and are substantially the same as the Petitioner's existing performance share plan;
 - (b). a general mandate for interested person transactions to enable NewCo, its subsidiaries and associated companies that are considered to be "entities at risk" to enter, in the ordinary course of business, into certain types of transactions with specified classes of NewCo's "interested persons", provided that such transactions are made on normal commercial terms and in accordance with the review procedures for such transactions; and
 - (c). a share issue mandate by NewCo to grant authority to the NewCo Directors, *inter alia*, to allot and issue NewCo Shares and/or convertible securities of NewCo.
8. There is no Cayman Islands or Singapore law requirement to obtain the prior approval of the Petitioner's shareholders to such matters, however such approval has been requested by the Singapore Stock Exchange.
9. The restructuring to be effected pursuant to the Scheme is purely an internal restructuring exercise undertaken by the Petitioner and NewCo to enable the Scheme Shareholders to give up their shareholding interests in the Petitioner in exchange for shareholding interests in NewCo. As the principal asset of NewCo immediately after the completion of the restructuring to be effected by the Scheme will only be the shares in the Petitioner, the Scheme will not cause or result in any substantive change in the financial position of the Group. In particular, the Scheme does not involve the write-off of any debt of the Petitioner and the aggregate assets and liabilities of the Group after the completion



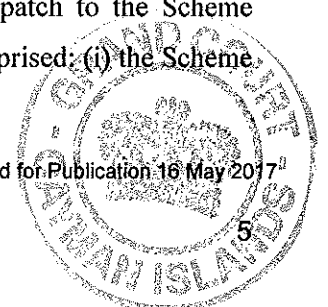
of the Scheme will be substantially the same as that prior to completion of the proposed restructuring pursuant to the Scheme.

Evidence filed in support of the Scheme

10. The evidence filed in support of this application consisted of:
- (a). the First Affidavit of Michio Tanamoto, the chairman and chief executive officer of the Petitioner, sworn on 20 March 2017 (**Tanamoto First**). Tanamoto First explained the purpose of the Scheme. Exhibited to Tanamoto First at Exhibit "MT-1" was the draft of the proposed explanatory circular (the **Scheme Circular**) in substantially the form that the Petitioner intended to send to the Scheme Shareholders; and
 - (b). the First Affirmation of Leonard Ching Tchi Pang, a partner at Allen & Gledhill LLP, Singapore legal advisers to the Petitioner, sworn on 21 March 2017, which addressed compliance with regulatory requirements arising out of the Singapore Stock Exchange's listing requirements with respect to the Petitioner, and the exhibits thereto which contained a copy of Mr. Pang's biography and copies of the relevant Singapore regulatory rules.

Matters for determination

11. The Petitioner submitted and I agree that the following matters arise for determination, having regard in particular to the requirements as set out in paragraph 3 of the Practice Direction:
- (a). is the Scheme "an arrangement" within the meaning of section 86(1) of the Companies Law (the **Arrangement Issue**)?
 - (b). if so, do the ordinary shareholders of the Petitioner comprise the relevant class of shareholder affected by the Scheme (the **Classes Issue**)?
 - (c). does the Scheme documentation which the Petitioner intended to dispatch to the Scheme Shareholders for review before and at the Court Meeting and which comprised: (i) the Scheme



Circular; (ii) the notice convening the Court Meeting (the **Notice**); and (iii) the proxy forms (the **Proxy Forms**) for use at the Court Meeting; (together the **Scheme Documents**) conform to and satisfy the requirements of GCR O. 102, r. 20 and the Practice Direction (the **Scheme Documents Issue**)?

- (d). is the Court satisfied with the manner in which the Petitioner proposes to seek the approval of the Scheme Shareholders including the reasonableness and appropriateness of the timetable for the Scheme set out in the Scheme Circular; the dispatch of the Scheme Documents; the time, date and place of the Court Meeting; the chairperson of the Court Meeting; and whether there should be advertisement of the notice of the Court Meeting (the **Scheme Process Issue**)?

The Arrangement Issue

12. As regards the Arrangement Issue, I was satisfied that the Scheme satisfies the requirement of being and is to be treated as an arrangement. I confine myself to a reference to one authority which is helpful on this issue. in *Re T&N Ltd* [2007] 1 BCLC 563 at [49] David Richards J said:

"It is fair to say that a great majority of schemes of arrangement involving members do not involve a compromise. For example, schemes providing for the acquisition of companies by a third party whether by way of transfer of existing shares or the cancellation of existing shares and the issue of new shares to the acquiring third party on terms that the third party provide the consideration to the members are not compromises. But they are arrangements between the company and its members because they involve a change in the membership of the company (see, for example, Re Savoy Hotel Ltd [1981] Ch 351)."

The Classes Issue

13. The parties to the Scheme are all the (ordinary) shareholders of the Petitioner. Before the Scheme becomes effective they have the same rights. The Scheme treats them all in the same way. Therefore they properly constitute a single class of members.
14. The Petitioner drew to my attention the fact that Mr. Tanamoto subscribed for one share in NewCo on its incorporation, thereby becoming its sole subscriber shareholder. Mr Tanamoto is also a Depositor (that is he holds an interest in the Shares) but in order to ensure that he is not treated differently under

the Scheme from other depositors he has waived his right (as a Depositor) to receive one new share in NewCo out of the total number of new shares that he would otherwise receive if the Scheme becomes effective. Accordingly, the net result will be that, following the Scheme becoming effective, Mr. Tanamoto will hold the same number of shares in NewCo as he held in the Petitioner prior to the Scheme becoming effective. It seems to me that as a result the fact that Mr Tanamoto is a subscriber shareholder of NewCo does not affect my conclusion as to the appropriateness of there being a single class of members to vote on the Scheme.

The Scheme Documents Issue

15. Having reviewed the Scheme Documents I concluded that as a general matter the requirements of paragraph 3 of the Practice Direction were satisfied (as they related to the form and content of the scheme documentation).
16. However, at the hearing I did raise a number of questions regarding some of the explanations provided in the Scheme Circular (and the letter from the Petitioner's board to shareholders and depositors sent therewith) in so far as they dealt with the reasons for the Scheme (as they seemed to me to be incomplete or unclear) and the process for and mechanics of voting by depositors.
17. I had some concerns that the explanations provided as to the reasons for the Scheme were insufficiently detailed and could leave some shareholders and depositors uncertain as to precisely what benefits were said to flow from the Scheme. I noted that relocation schemes are well known and understood and that the Scheme Circular provided helpful general explanations as to the advantages to the Petitioner and Scheme Shareholders of having a Singapore holding company which would replace the Petitioner, as the listed entity in the Group. I also noted that importantly there was a clear and detailed summary of the impact on the position of shareholders resulting from the change in the place of incorporation of and law governing their company – from Cayman to Singapore - and the proposed amendments to the corporate constitution of Newco (while I would have preferred to see a clear statement that there was no material change in the position and rights of shareholders. I was satisfied

that the disclosure in the Scheme Documents was sufficient to enable Scheme Shareholders and Depositors to take an informed decision on the Scheme). But the nature of the benefits to be achieved by the Scheme was not always made explicit. While these issues did not seem to me to be sufficiently material to impact on my decision to proceed to convene the meeting of Scheme Shareholders I invited the Petitioner to consider making amendments to clarify and expand the discussion of these points. The Petitioner did so and after the hearing submitted an amended draft of the Scheme Circular and the letter from the board which I approved. The following additional wording (underlined) was added in paragraph 3.6 of the letter from the Petitioner's board:

"3.6 At present, the Petitioner is the listed vehicle. Following the Proposed Restructuring, the Petitioner will relinquish its status as a listed company and become a wholly-owned subsidiary of NewCo. As announced by the Petitioner on 23 January 2017, the overall objective behind the Proposed Restructuring, together with the Scheme, is to effect a change in the place of incorporation of the vehicle in the group listed on the SGX-ST from the Cayman Islands to Singapore (as further described below). The Proposed Restructuring enables the establishment of a corporate structure where:

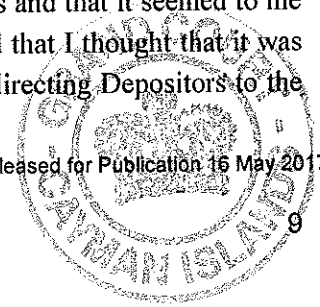
- (a) Newco ..becomes an investment holding company owning 100% of the issued and paid up]share capital of the [Petitioner] .. and the listed vehicle in place of the [Petitioner]; and*
- (b) the [Petitioner] will cease its function as the listed vehicle within the Newco Group and continue as the investment holding and operational company carrying out its existing businesses.*

The [Petitioner] is of the view that the Proposed Restructuring will be able to:

- (i) effect a change in the place of incorporation of the listed vehicle of the NewCo Group from the Cayman Islands to Singapore, This is in view that [sic] as the main area of business of the listed vehicle and its subsidiaries is in Asia .. such change in the placer of the listed vehicle will better facilitate the operations of the listed vehicle and its subsidiaries in Asia;*
- (ii) by having NewCo (which is an investment holding company with no business operations) as the listed entity on the SGX-ST, achieve ease and flexibility for the NewCo Group to acquire new businesses, as well as expand and/or divest existing business segments as and when opportunities arise. There is less flexibility within the current structure of the group as the current listed vehicle, being the [Petitioner], is directly engaged in operational aspects of the business of the group including by way of the [Petitioner] providing fee generating investment management advisory services, engaging in property and fund investment and being a partner in various joint ventures (including shipping related joint ventures). The [Petitioner] may require the consent of these joint venture counterparties for any expansions or divestment of its business segments. Furthermore, NewCo as a non-operational holding company will be able to acquire new businesses with a different risk profile from the current businesses of the [Petitioner] and operate such new businesses under a separate subsidiary, subject to compliance with the Listing Manual. This structure will allow the NewCo Group to grow and develop new businesses without affecting the [Petitioner's] current business or exposing the [Petitioner's] current business to risks that may arise from new business lines; and*

- (iii) *as a natural consequence of the Proposed Restructuring, by having NewCo as the listed entity on the SGX-ST and the investment holding company at the top of the group structure, separate the listed entity from the NewCo Group's operating entities and upstream value created by the operational group to hold at NewCo's level, and therefore better protect such value it from operational risks (including any possible claims and litigation arising in connection with the NewCo Group's operations and business including the investment management advisory services provided by the Company).*"

18. I also had some concerns, from my review of the Proxy Forms and the description in the Scheme Documents, as to the effectiveness of the proposed mechanism to be adopted for allowing Depositors to vote on the Scheme. In particular, the Petitioner proposed to rely on the terms of the Petitioner's articles of association (article 63) that dealt with the appointment of proxies by the Depository for meetings of the Petitioner (and the Petitioner proposed to incorporate into the Order a direction that article 63 applied to and for the purposes of the Court Meeting). Article 63 permits the Depository to appoint more than two proxies who may each exercise the same powers on behalf of the Depository as it could exercise including the right to vote. It also provides that the Depository is "*deemed to have appointed*" as its proxies to vote at a general meeting the Depositors whose are individuals and whose names appear in the Depository Register, without the need for an instrument of proxy to be signed and lodged by the Depository (unless the Depository gave a written notice to the contrary). It seemed to me that it was inappropriate for voting at a meeting convened by the Court to consider a scheme to be based on deemed authority rather than a decision made and authority specifically given by the registered shareholder (in this case the Depository) for the purposes of the scheme meeting.
19. I therefore indicated at the hearing that I would require that the Proxy Forms be signed by the Depository and that the voting mechanism should not rely on the principle of a deemed authority from the Depository and that the Order should not refer to article 63. At the hearing Counsel for the Petitioner helpfully explained that the Proxy Forms did appear to provide for there to be a signature by the Depository (although they were not easy to read and understand in some places but appeared to be based on a standard form used in similar cases) so that they could be used without further amendment.
20. The voting mechanics to be adopted to allow Depositors to attend and vote (as proxies for the Depository) provided Depositors with three different options which were explained in the Scheme Documents. Depositors could be appointed a proxy for CDP and personally (or if a corporation the Depositor could nominate an appointee to be its representative who could) attend the Court Meeting and vote; Depositors could vote without attending the Court Meeting by nominating in the Proxy Form the chairman of the Court Meeting to be the proxy for CPD and giving the Chairman an instruction as to how to vote and the Depositor could appoint another person to attend and vote at the Court Meeting as the proxy for CPD. I indicated at the hearing that I found the main description of these options, in paragraph 15 of the letter from the Petitioner's board, to be unclear in places and that it seemed to me that it would benefit from some clarification and redrafting (I also indicated that I thought that it was important for there to be a clear message early in the Scheme Documents directing Depositors to the



more detailed discussion of voting mechanics and this was helpfully added at the end of the Indicative Timetable). Following the hearing the Petitioner made amendments to paragraph 15 to clarify the voting mechanics which I approved. The main amendments are set out below (underlined):

"Depositors cannot vote directly at the Court Meeting as only Shareholders (being registered as holders of Shares in the register of members of the [Petitioner]) are entitled to vote at the Court Meeting in accordance with the Companies Law.

However, CDP will appoint each of the Depositors and, in relation to each of the Depositors, in respect of such number of Shares set out opposite their respective names in the Depository Register as at the Voting Record Date, as its proxy/proxies.

Accordingly, each Depositor may:

- (a) *attend the Court Meeting and vote the Scheme Shares credited to its/his/her Securities Account in person.*

A Depositor who is a natural person will be appointed as CDP's proxy pursuant to a proxy form lodged or to be lodged by CDP with the Company. A natural person therefore need not submit a Depositor Proxy Form if he/she is attending the Court Meeting in person.

Where a Depositor is a corporation and wishes to be represented at the Court Meeting, it must appoint an Appointee / Appointees to attend and vote at the Court Meeting in respect of its depository interest by completing Parts II, III and V of the Depositor Proxy Form and lodging the completed Depositor Proxy Form in accordance with the instructions printed thereon.

- (b) *vote on the Scheme without attending the Court Meeting by completing Parts III and V (only) of the lodging a Depositor Proxy Form (a copy of which is sent with this Scheme Document) to the benefit of thereby appointing the chairman of the Court Meeting as its proxy (a copy of which is sent with this Scheme Document) completed and signed and lodging the Depositor Proxy Form at the office of the Registrar and Singapore Share Transfer Agent, [[either by hand at 80 Robinson Road, #11-02 Singapore 068898 or by post at 80 Robinson Road, #02-00 Singapore 068898,]] in accordance with the instructions printed thereon so as to arrive not less than 48 hours before the time fixed for the Court Meeting. Alternatively, the Depositor Proxy Form may be handed before the commencement of the Court Meeting to the chairman of the Court Meeting at the Court Meeting who shall have absolute discretion as to whether or not to accept it ; or*

- (c) *appoint any other person(s) to vote at the Court Meeting in its/his/her stead by appointing such person(s) as its/his/her proxy by completing Parts II, III and V of the Depositor Proxy Form, signing and lodging it a Depositor Proxy Form in accordance with the instructions printed thereon.*

21. I also indicated that I thought that it was important to include a provision in the Order expressly permitting CPD to split its vote. This seems to me to be a necessary and important part of the "multi-headed shareholder" approach. CPD is the shareholder with the right to vote and in a case in which arrangements were being made to enfranchise the Depositors it was important for the Court's order to

authorize the shareholder of record to split its vote so that proxies voting for and against the Scheme could be separately counted. The Order was amended to include appropriate wording for this purpose.

The Scheme Process Issue

22. At the hearing I also indicated that I was satisfied with the proposed arrangements and process for distributing the Scheme Documents, for notifying Scheme Shareholders and Depositors and for holding and conducting the Court Meeting.
23. I did note (see paragraph 4 above) that a number of Scheme Shareholders appeared to be resident and located outside Singapore and so it was important that the arrangements for dispatching the Scheme Documents to them would ensure that the Scheme Documents would (actually and not just be deemed to be) be received at least twenty one days in advance of the Court Meeting. Counsel for the Petitioner confirmed that this would be the case and I was therefore satisfied.



THE HONOURABLE JUSTICE SEGAL
JUDGE OF THE GRAND COURT

