

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 273 OF 2009

IN THE MATTER OF SECTIONS 86 AND 87 THE COMPANIES LAW (2007 REVISION)

AND IN THE MATTER OF EUROTRADE LTD.

PETITION



To: The Grand Court

THE HUMBLE PETITION OF EUROTRADE LTD., of PO Box 32322, 4th Floor, Century Yard, Cricket Square, George Town, Grand Cayman, Cayman Islands (hereinafter called the "**Company**" or "**Eurotrade**") with an administrative office at Regatta Office Park, Windward 1, Ground Floor, West Bay Road, Grand Cayman, Cayman Islands SHEWETH as follows:

- 1 The object of this Petition is to seek the sanction of the Court pursuant to sections 86 and 87 of the Companies Law (2007 Revision) to a proposed Scheme of Arrangement (the "**Scheme**") between the Company and a class of its creditors, the Scheme Participants (as defined in the Scheme and described in greater detail below). The purpose of the Scheme is (1) to enable the Company to transfer its undertaking and business to a newly incorporated company (the ownership of which would be clear) intended to be incorporated as an exempted company under the laws of the Cayman Islands ("**Newco**") the shares of which would be owned by the Company's current shareholder of record, Dufry South America Ltd ("**Dufry**"), and (2) to compromise potential claims arising out of the Purported Share Conversion, and/or Purported Share Subdivision, and/or the Impugned Transactions described further below.

- 1.1 The proposals contained in the Scheme envisage that:

- (a) all claims:
 - (i) the Scheme Participants may have against the Company; and
 - (ii) each Scheme Participant (who so undertakes) may have against each other Scheme Participant,

related to or arising out of the Purported Share Conversion, and/or Purported Share Subdivision and/or the Impugned Transactions will be released, discharged and waived;
- (b) all of the Company's assets, liabilities and undertakings will be transferred to NewCo, of which Dufry will be its sole shareholder;
- (c) Newco, which will be called "Eurotrade Corporation" will continue to conduct the Company's existing business; and
- (d) the Company will be dissolved without a winding up.

The Company

- 2 On 8 September 1988 the Company was incorporated in the Cayman Islands as an exempted company limited by shares.
- 3 The objects for which the Company was established are unrestricted, and generally to carry out the objects more particularly described in its Memorandum of Association and its purported Amended and Restated Memorandum of Association.
- 4 The Company is part of the Dufry group of companies ("**Dufry Group**"), which is a travel retailer with operations around the world.
- 5 The Company's principal business activity is to provide assistance to Dufry Group's operations in connection with purchasing and supply for their duty free stores.
- 6 On 9 May 1994 the Company was granted a Cayman Islands Trade and Business Licence. The Company currently has two employees working in its office located at Regatta Office Park, Grand Cayman.

- 7 The Company's principal assets comprise cash, receivables from other companies within the Dufry Group and stock-in-trade. The Company is solvent and is able to pay its debts as and when due and payable in the ordinary course of business.

The history of the Company's share capital and the entries in its Register of Members

- 8 On 8 September 1988, upon the Company's incorporation, W John Leveridge, the Company's sole subscriber, subscribed for two ordinary shares issued by the Company, each of which had a par value of US\$1.00. These details were entered on the Company's Register of Members (the "**Register**").
- 9 On or about 8 September 1988, W. John Leveridge transferred both of his ordinary shares in the Company to Brasif Overseas Holding Limited ("**Brasif Overseas**"). The Company removed the name of W. John Leveridge from the Register and entered Brasif Overseas into it as the holder of two ordinary shares each with a par value of US\$1.00.
- 10 On or about 31 December 1991, the Company purported to convert the two ordinary shares with a par value of US\$1.00 held by Brasif Overseas into two ordinary shares of no par value held by Brasif Overseas (the "**Purported Share Conversion**"). The Company amended the entry of Brasif Overseas in the Register purporting to show it as the holder of two ordinary shares of no par value.
- 11 On or about 2 January 1996, the Company purported to subdivide the two ordinary shares of no par value purportedly held by Brasif Overseas into 1,000,000 shares of no par value (each a "**Purported No Par Share**") (the "**Purported Share Subdivision**"). No resolution was passed by the Company's shareholders authorising the Purported Share Subdivision. The Company amended the entry of Brasif Overseas in the Register purporting to show it as the holder of 1,000,000 Purported No Par Shares.
- 12 On or about 3 January 1996 and on or about 10 October 1996 there were a number of purported transfers of various lots of Purported No Par Shares. The Company made the removals and entries in the Register purporting to show these transfers. At the conclusion of these purported transfers the Company had entered the following companies on the Register as holders of 1,000,000 Purported No Par Shares:

- 12.1 Holderness Investments Ltd ("**Holderness**") as to 570,000;
 - 12.2 Kirkella Investments Ltd ("**Kirkella**") as to 50,000; and
 - 12.3 Brantingham Investments Ltd ("**Brantingham**") as to 380,000.
- 13 On or about 22 June 1999, the Company purported to buy back the 380,000 Purported No Par Shares purportedly held by Brantingham. No resolution was passed by the Company's shareholders authorising this purchase. The Company removed the name of Brantingham from the Register.
- 14 On or about 23 March 2006 Holderness and Kirkella purported to transfer 620,000 Purported No Par Shares to Delmey Sociedad Anonima (now known as Dufry South America Investments S.A.) ("**Delmey**"). The Company removed the names of Holderness and Kirkella from the Register and entered Delmey into the Register as the purported holder of 620,000 Purported No Par Shares.
- 15 On or about 24 October 2006, Delmey purported to transfer 620,000 Purported No Par Shares to Dufry. The Company removed the name of Delmey from the Register and entered Dufry into the Register as the purported holder of 620,000 Purported No Par Shares.
- 16 At various times between 3 January 1996 and 24 October 2006, 18 separate entities have been made on the Register purporting to show 17 different persons or entities as holders of Purported No Par Shares (the "**Scheme Participants**").

The Impugned Transactions

- 17 A company incorporated in the Cayman Islands -
- 17.1 that has issued shares with a par value may not convert such par value shares into shares without a par value;
 - 17.2 may not subdivide lawfully-issued shares (with or without a par value) without the authorisation of its shareholders; and
 - 17.3 may not purchase its lawfully-issued shares (with or without a par value) without the authorisation of its shareholders.

18 In the premises

18.1 the Purported Share Conversion on or about 31 December 1991 was invalid and/or was ultra vires;

18.2 the Purported Share Subdivision on or about 2 January 1996 was invalid and/or ultra vires;

18.3 the various purported transfers of No Par Shares and the purported buy-back of No Par Shares between 3 January 1996 and 24 October 2006 (the "**Impugned Transactions**") did not transfer any legal interest in shares of the Company, alternatively did not transfer the legal interest recorded as having been transferred in the Register.

19 It follows that acts of the Company, when purporting to act by its shareholders in general meeting, or otherwise, from 31 December 1991 to date, may have lacked essential validity and/or may have been ultra vires. For instance, at purported general meetings of the Company, or any of them, from 31 December 1991 to date convened for, and attended by various of the Scheme Participants from time to time:

19.1 it is doubtful that notices were given to those, and only those, persons and entities who were entitled to receive notice;

19.2 the quorum of such meetings is open to doubt;

19.3 the validity of resolutions purportedly passed by the majorities required by the Company's Memorandum and Articles of Association (as originally constituted or as purportedly amended) is open to doubt including, in particular,

(a) the special resolution purported to have been passed on 15 September 2006 to amend the Company's Memorandum of Association and Articles of Association;

(b) resolutions purporting to authorise the Company's directors to do, or omit to do, any act;

- (c) resolutions approving the payment of dividends, or other distributions, to the purported shareholders at the relevant time.

The Scheme Participants' possible claims

20 From time to time the Company has or may have represented orally, and/or in writing, and/or by conduct to Scheme Participants, and each of them, various facts that, arguably, were wrong (but the Company was unaware at the relevant time that the facts were wrong) but the Company knew, or ought to have known, that these facts would be relied upon by Scheme Participants, namely that Scheme Participants were lawfully entitled to be registered, and/or were lawfully registered, and/or were lawfully entitled to be de-registered, as holders of No Par Shares in the Company including, in particular:

20.1 entered their names into the Register, and removed their names, in respect of Purported No Par Shares; and/or

20.2 sent to them documents in furtherance of general meetings, such as notices of general meetings and forms of proxy for voting thereat; and/or

20.3 accepted votes that they purported to cast at general meetings; and/or

20.4 accepted instruments executed by them that purported to transfer Purported No Par Shares; and/or

20.5 paid dividends and/or distributions to them.

21 Scheme Participants relied on the aforesaid representations (without knowledge that the aforesaid representations were wrong or arguably were wrong), in particular they:

21.1 consented to the entry and removal of their names from the Register in respect of Purported No Par Shares; and/or

21.2 purported to vote at the Company's general meetings; and/or

21.3 received dividends and distributions from the Company; and/or

21.4 entered into the Impugned Transactions,

and the Scheme Participants thereby have suffered and/or may have suffered and/or in future suffer loss and damage, subject to their duty to mitigate their loss, including the benefit of any express or implied indemnities that Scheme Participants have from other Scheme Participants. In the absence of discovery and witness statements from the Scheme Participants the Company is not able to assess the merits, or quantify, the Scheme Participants' possible claim for loss and damage (if any).

- 22 In the premise, the Scheme Participants are, or may be, or may in future become creditors of the Company for unliquidated sums.

The Proposed Scheme

- 23 The Company sees no benefit to the Company or the Scheme Participants seeking to establish the true rights of the Company and the Scheme Participants by litigation or otherwise. Throughout the period 31 December 1991 to 24 October 2006 the Company and the Scheme Participants acted bona fide and without knowledge of the true state of affairs, and proceeded on the assumption that the Register was true and correct in all respects and, in particular, that those Scheme Participants who appeared on the Register from time to time were in fact the true legal and beneficial owners of the Company.
- 24 The Company proposes to compromise all of the potential claims that the Scheme Participants have, or may have or may in future have, against it relating to or arising out of the Purported Share Conversion, and/or the Purported Share Subdivision and/or the Impugned Transactions, and resolve doubts and uncertainties caused directly or indirectly by the Purported Share Conversion, the Purported Share Subdivision and the Impugned Transactions, and obtain certainty that its true owner is Dufry. In turn Dufry wishes to be able to establish that it has clear title to shares in a company that owns and operates the business and undertaking of the Company.
- 25 In order to achieve that objective, the Company (with the support of Dufry and Brasif Overseas) proposes that the Company, the Scheme Participants, Brasif Overseas and Dufry enter into the proposed Scheme, the principal features of which are that:

25.1 all possible claims:

- (a) the Scheme Participants may have against the Company; and
- (b) each Scheme Participant (who so undertakes) against all other Scheme Participants,

related to or arising out of the Purported Share Conversion, and/or the Purported Share Subdivision and/or the Impugned Transactions will be released, discharged and waived;

25.2 all of the Company's assets, liabilities and undertakings will be transferred to NewCo, pursuant to an order under section 87 of the Companies Law (2007 Revision). NewCo, the sole shareholder of which will be Dufry.

25.3 The Company will then be dissolved without a winding up.

Your Petitioner therefore humbly prays as follows:

- (1) The Scheme be sanctioned by the Court so as to be binding on the Company, the Scheme Participants, Brasif Overseas, NewCo, and Dufry;
- (2) That all necessary directions be made to effect the Scheme including pursuant to section 87 of the Companies Law:
- (3) That such further or additional orders may be made as the Court shall see fit.

Dated the 3rd day of June 2009

Maples and Calder

Maples and Calder

NOTE: This petition is intended to be served on the Company c/o Wilmington Trust Corporate Services (Cayman) Limited, PO Box 32322, 4th Floor, Century Yard, Cricket Square, George Town, Grand Cayman, Cayman Islands.

ENDORSEMENT

This Petition having been presented to the Grand Court of the Cayman Islands on the 3rd day of June 2009 will be heard at the Grand Court of the Cayman Islands on the 21st day of August 2009 at o'clock in the fore/after noon or as soon thereafter as the Petition can be heard.

This Petition was presented by Maples and Calder, attorneys for the Petitioner, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.
(CDM:JSE/624419/16770346)