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Case No: CR-2019-000868

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
COMPANIES COURT (CHD)

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 5 June 2019

Before:

MR JUSTICE SNOWDEN

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IN THE MATTER OF MAN GROUP PLC

AND IN THE MATTER OF THE COMPANIES ACT 2006

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Stephen Horan (instructed by **Allen & Overy LLP**) for the **Applicant**

Hearing date: 24 May 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN:

Introduction

1. On Friday 24 May 2019 I made an order under section 899 of the Companies Act 2006 (the "Act") sanctioning a scheme of arrangement (the "Scheme") between Man Group plc (the "Company") and the holders of its ordinary shares (the "Scheme Shareholders"), together with an order under section 648 of the Act confirming an associated reduction of capital. I indicated I would give my reasons in writing, which I now do.

2. The Company is incorporated in England. It has two classes of shares: a little under 1.6 billion ordinary shares of 3 3/7 US cents each and 50,000 deferred shares of £1 each (the "Deferred Shares"). The Company's ordinary shares are listed on the main market of the London Stock Exchange.

3. Until very recently the Company held about 68 million ordinary shares which it had repurchased in treasury. However, the Company cancelled such shares in accordance with sections 729-730 of the Act. At the Voting Record Time on 8 May 2019, the time at which entitlement to vote at the Court Meeting was determined, there were 1,542,278,975 Scheme Shares.

4. The Deferred Shares are held by the Company's Company Secretary. They do not form part of the Scheme. They are a hangover from when the Company required £50,000 of paid up capital to obtain a trading certificate as a plc in 2012. The rights conferred by the Deferred Shares are set out in article 6 of the Company's Articles. They confer no rights to vote or attend meetings or have notice of meetings and no rights to income. They do, however, confer the right on a distribution or return of capital to a return of nominal value once every other share has had its nominal value plus £100 billion returned. The Deferred Shares will be cancelled under a private company solvency statement reduction of capital shortly after the Company re-registers as a private company following the Scheme becoming effective.

5. The Company and its subsidiaries (the "group") are involved in active investment management over a wide range of products and in a number of international jurisdictions. The purpose of the Scheme is to insert a new holding company incorporated in Jersey, also to be known as Man Group plc ("New Man"), as the new parent company of the group. The Scheme Shareholders will become the shareholders in New Man.

6. It is said by the Company that the Scheme will give the group greater flexibility to compete in international markets with other institutional asset management businesses having a similar structure. Specifically, the insertion of New Man as a new Jersey holding company will mean that the companies in the group incorporated outside of the UK and the EEA will no longer be subject to the UK regulator's full suite of prudential regulation as well as local regulation, and the group as a whole will not be subject to the UK regulator's global consolidated capital requirements.

7. The insertion of the new parent company is being done by way of a cancellation scheme. All of the ordinary shares of the Company are being cancelled in an associated reduction of capital and the reserve arising on the reduction is being applied in paying up new ordinary shares to be issued to New Man. Subject to clause 2.3 of the Scheme (which I address below), New Man will issue its own ordinary shares to the Scheme Shareholders. As a result, the Scheme Shareholders will, in effect, have exchanged their ordinary shares in the Company for the same number of ordinary shares in New Man.

8. Clause 2.3 of the Scheme makes provision for treating a Scheme Shareholder as a restricted shareholder – defined as one who is resident in a jurisdiction where New Man is advised that the allotment and issue of New Man ordinary shares to the shareholder in question would be precluded except after compliance with legal and regulatory requirements which New Man would be unable to comply with or which it regards as unduly onerous. Where this is the case, New Man may, at its discretion, require the New Man shares to be sold on behalf of the restricted shareholder and the net proceeds of sale remitted to him.

9. Following the Scheme becoming effective, the Company's ordinary shares will be delisted and New Man's ordinary shares will be listed on the main market of the London Stock Exchange on Tuesday 28 May 2019. In addition, a further intermediate Jersey holding company will be interposed between the Company and New Man, so the Company will become a wholly owned subsidiary within the group of which New Man will be the ultimate parent.

The function of the Court

10. The function of the Court at a sanction hearing for a scheme is summarised in the following extract from *Buckley on the Companies Acts* on section 899 of the Act which has frequently been cited with approval and applied by this Court:

> "Sanction of the court
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> Once the meetings have approved the scheme, the sanction of the court must be sought. The sanction of the court is not a mere formality. Although the court has an unfettered discretion as to whether or not to sanction the scheme, it is likely to do so, as long as: (1) the provisions of the statute have been complied with; (2) the class was fairly represented by those who attended the meeting and that the statutory majority are acting bona fide and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and (3) the arrangement is such as an intelligent and honest man, a member of the class concerned and acting in respect of his interest might reasonably approve…
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> The court does not sit merely to see that the majority are acting bona fide and thereupon to register the decision of the meeting. The court will decline to sanction the scheme if the class has not been properly convened and properly consulted, or the meeting has not considered the matter with a view to the interests of the class which it is empowered to bind, or some blot is found in the

> scheme which had been unobserved when it had been approved by members or creditors, but will otherwise be slow to differ from the meeting."

11. In relation to a reduction of capital, the Court will require satisfaction of the following matters,

    a) The resolution reducing capital must be a validly passed special resolution.

    b) The shareholders must be treated equitably in relation to the reduction. Shareholders do not all have to be treated in the same manner provided that any unequal treatment is either in accordance with the rights attached to any class or the consent of those affected by such treatment has been properly obtained.

    c) The proposals must have been properly explained to the shareholders so that they can exercise an informed judgment upon them.

    d) The creditors of the company must be safeguarded so that the proposals do not operate to their detriment, namely that there is a real likelihood that the reduction itself would result in the company being unable to discharge the debts when they fall due.

    e) The reduction must be proposed for a discernible purpose.

12. Proposition (a) above arises from the wording of section 641(1)(b). Propositions (b), (c) and (d) are derived from the judgment of Harman J in Re Ratners Group plc [1988] BCLC 685 at 687b-d, with the judgment of Norris J in Re Liberty International plc [2010] 2 BCLC 665 at para. 11 supplementing proposition (d). Proposition (e) is derived from the judgment of Harman J in Re Thorn EMI Plc [1989] BCLC 612 at 616d.

13. I shall return to consider the application of these principles later in this judgment. First, however, I must deal with a question of jurisdiction arising out of the prohibition on certain types of cancellation schemes under section 641(2A) of the Act.

Is the reduction of capital barred by section 641(2A) of the Act?

14. Until 2015, virtually all takeover schemes of arrangement took the form of cancellation schemes of arrangement, because the cancellation and reissue of the target company's share capital did not involve any stampable transfers of shares. This tax loophole was closed when the Act was amended in early 2015 to prevent reductions of capital being used as part of a takeover scheme. The insertion of sections 641(2A), (2B) and (2C) has meant that takeovers now have to be effected as transfer schemes without any reduction of capital.

15. However, as an exception to section 641(2A), section 641(2B) permits the use of a cancellation scheme where the purpose is to insert a new holding company into a group by way of a corporate reorganisation rather than to effect a change of control. Under section 641(2B), the prohibition against using reductions of capital for schemes set out in section 641(2A) does not apply where:

a) the company is to have a new parent undertaking;

b) all or substantially all of the members of the company become members of the parent undertaking; and

c) the members of the company are to hold proportions of the equity share capital of the parent undertaking in the same or substantially the same proportions as they hold the equity share capital of the company.

16. I recently examined the operation of section 641(2B) in Re Steris Plc [2019] EWHC 751 (Ch). Steris involved the insertion of a new Irish parent company above the scheme company. The scheme involved the company's ordinary shares. There were, however, preference shares issued by the scheme company, which were not equity share capital as defined by section 548 of the Act. They were all held by one member, were not scheme shares and were not being cancelled. The scheme shareholders who held ordinary shares represented more than 99% of the headcount of total members, and about 99.9% of the total nominal value of the scheme company's share capital.

17. On these facts, and having regard to the mischief sought to be addressed by the amendments to section 641 as described in an Explanatory Memorandum prepared by the Department for Business, Innovation and Skills in connection with the amendment of section 641, I held that the members of the new Irish parent company would comprise "substantially all" of the members of the scheme company so as to fall within section 641(2B)(b); and that there was a sufficient identity of members and their proportionate holding of equity shares in the scheme company and in the new holding company so as to fall within section 641(2B)(c), notwithstanding that the holder of the preference shares did not become a shareholder in the new parent company: see paragraphs [27]-[31] of the judgment. In short, I considered that the exclusion from the new parent undertaking of the holder of a relatively small number of non-equity shares in the scheme company made no difference to the availability of the exception.

18. In the instant case, in contrast to Re Steris, the 50,000 Deferred Shares which are excluded from the Scheme do fall within the definition of equity share capital under section 548 of the Act, because they carry a right to participate as respects capital beyond a specified amount in a distribution. In reality, however, the specified level for participation is so high that the Deferred Shares will never be able to participate.

19. In addition, the proportion which the Deferred Shares bear to the Scheme Shares is even smaller than in Re Steris. As I have indicated, there is one holder of the Deferred Shares; there are 5,649 Scheme Shareholders. The Deferred Shares represent £50,000 of nominal value and have rights of no real value; the Scheme Shares have a nominal value of approximately £53 million and the Company has a market capitalisation of well over £2 billion.

20. On these facts, I consider that the requirements of section 641(2B)(a) and (b) are clearly met. The Company is to have a new parent undertaking, and the Scheme Shareholders comprise substantially all of the members of the Company and will become members of that new parent undertaking.

21. The only issue arises under section 641(2B)(c). The Company Secretary as holder of the Deferred Shares will not hold any shares in New Man. Hence not all of the members of the Company will have their holdings of equity shares replicated in precisely the same proportions in New Man. The question is whether this prevents the Scheme from complying with section 641(2B)(c).

22. Reading section 641(2B) as a whole, it is clear from subsection (b) that it contemplates the exception being available where not all of the members of the scheme company become members of the new parent undertaking, but where only "*substantially all*" of the members of the company become members of the parent undertaking. That being so, I think that it must follow that the opening words of subsection (c) cannot mean "*all of* the members of the company": that would defeat the intention in subsection (b). Moreover, it is clear from its express wording that subsection (c) does not require an exact correspondence of equity shareholdings between the members of the scheme company and the new parent undertaking.

23. On that basis, I am satisfied that the fact that the single holder of the Deferred Shares will not hold any equity shares in New Man does not prevent subsection 641(2)(c) from being satisfied. Substantially all of the members of the Company will hold the equity shares in New Man, and will, as between them, hold their equity shares in the same proportions as they hold equity share capital in the Company. The only person not included holds a miniscule proportion of the equity share capital in the Company, and her shares have rights of no real value.

24. As in Re Steris, I am reassured in this conclusion by the fact that the Scheme plainly does not have any of the mischief sought to be addressed by the prohibition in section 641(2A). Indeed, I consider that it would be a very odd result were it necessary to replicate the Deferred Shares in New Man, or otherwise to require the holder of those shares to be given some tiny proportion of the ordinary shares in New Man in order to ensure that the exception in section 641(2B) was available.

25. I should, in addition, mention two further points that Mr. Horan very properly drew to my attention in relation to the availability of the exemption in section 641(2B). The first is that New Man currently has two issued ordinary shares which were the original subscribers' shares. Those shares will represent an insignificant proportion of the equity share capital of New Man once the Scheme becomes effective, and the intention is that they will be bought back by New Man and cancelled once New Man has issued the new ordinary shares to the members of the Company. I am satisfied that these factors mean that the exception in section 641(2B) will still be available: the members of the Company will still become members of New Man, and any difference in their proportional shareholdings in New Man caused by the existence of the subscriber shares will be both insignificant and temporary.

26. The second point relates to the provisions of clause 2.3 of the Scheme, which, if applied to a member of the Company, would result in that person not becoming a holder of any shares in New Man. If applied to sufficient numbers of persons, that would arguably mean that section 641(2B)(c) was not satisfied. In that regard, I was told on instructions by Mr. Horan at the hearing that on the basis of the Company's then information as to who was likely to be a Scheme Shareholder, it was not expected that clause 2.3 would be applied to any members of the Company. On that basis I was content to sanction the Scheme, but on the assurance given by Mr. Horan that if it transpired at the Scheme

Record Time (6 pm on Friday 24 May 2019) that there were a significant number of members to which clause 2.3 was likely to be applied, the Company would not proceed to make the Scheme effective, but would apply to the Court for further directions. In the event, I did not receive any notification that this was so.

Sanction of the Scheme

27. The Court, by the order of ICC Judge Burton, convened a single class meeting of Scheme Shareholders to consider, and if thought fit, approve the Scheme. The Explanatory Statement was duly sent to all Scheme Shareholders by post or by email, or notification of its availability on the Company's website, according to prior shareholder elections as to receipt of Company communications. The Court Meeting was also advertised in The Times newspaper on 16 April 2019.

28. The Court Meeting was held on 10 May 2019 at which the requisite statutory majorities approved the Scheme. There were 613 (out of 5,649) Scheme Shareholders attending and voting in person or by proxy 1,096,063,591 shares out of a total of 1,542,278,975 Scheme Shares entitled to vote as at the Voting Record Time. This represented a turnout at the Court Meeting of 10.85% by number of Scheme Shareholders and approximately 71.07% by number of Scheme Shares. Although low in terms of headcount, Mr. Horan told me on instructions that the attendance was in line with the usual attendance at general meetings of the Company, and indeed the Court Meeting was held in conjunction with such a meeting. I therefore do not consider that there is any reason to believe that the low numbers attending signifies any defect in the notification process, or gives me reason to believe that those attending were not representative of the body of Scheme Shareholders as a whole.

29. Among those who did attend, there was strong support for the Scheme: 580 Scheme Shareholders attending the Court Meeting in person or by proxy voted 1,095,436,886 Scheme Shares in favour of the Scheme; 41 Scheme Shareholders voted 702,857 Scheme Shares against the Scheme. Of the Scheme Shareholders voting, there were 8 holders who voted some of their shares for the Scheme, and some against, to reflect the fact that they held their shares as nominees for different underlying beneficial holders. As is conventional, these split proxies were treated for headcount purposes as one vote for and one against.

30. Accordingly, the Scheme comfortably obtained the necessary statutory majorities in favour, being 93.4% in number and 99.94% by value.

31. Applying the approach set out in paragraph 10 above, I am therefore satisfied that the statutory provisions have been complied with, and that the persons attending the meeting were fairly representative of the class. I also have no reason to believe that the majority were acting in bad faith or that they were seeking to promote interests adverse to those of the class.

32. So far as the third limb of the *Buckley* test is concerned, given the Company's explanation of the purpose behind the Scheme to which I have referred, I accept that putting a new Jersey holding company at the top of the group and in effect exchanging ordinary shares in the Company for ordinary shares in New Man is unlikely to negatively alter the commercial value of the underlying investment of a Scheme Shareholder. I also accept that the change in overall regulatory regime for the group

could reasonably be thought by a Scheme Shareholder to be in the business interests of the entity in which he holds his investment.

33. I also note that the Explanatory Statement contained a summary of the differences in rights which Scheme Shareholders will have as shareholders in a Jersey company as opposed to being shareholders in an English company. Such differences would generally arise because of the difference between the Jersey Companies Law and the English Act. Some of those differences will remain: e.g. although both jurisdictions offer a remedy for unfair prejudice to shareholders, it is more difficult for shareholders in a Jersey company to bring a derivative claim than under the Act. In relation to many other differences, e.g. the majority required for a special resolution, the right to requisition a meeting of shareholders and the right to demand a poll on a resolution proposed at a meeting of the company, the Explanatory Statement made clear that the articles of New Man will incorporate provisions designed to replicate the existing rights of shareholders of the Company under the Act.

34. Taking these matters together, I am satisfied that an intelligent and honest member of the Company could reasonably consider the Scheme to be in his best interests. In that regard, I am not required to be satisfied that the Scheme is the only fair scheme or even the best scheme available. Instead, I adopt and apply the principle that all other things being equal, the Court will generally accept that shareholders acting on full information are normally the best judges of their commercial interests: see Lindley LJ in Re English, Scottish and Australian Chartered Bank Limited [1893] 3 Ch 385 at pp. 408-409 and Re Telewest Communications plc (No.2) [2005] 1 BCLC 772 at [21]-[22].

35. Having resolved the issues arising under section 641(2B), I am not aware of any "blot" on the Scheme.

36. I am therefore satisfied that it is appropriate, in my discretion, to sanction the Scheme.

Confirmation of the Reduction

37. Applying the criteria set out in paragraph 11 above, the evidence which I have seen demonstrates:

    a) the special resolution required by section 641 of the Act has been duly passed;

    b) all Scheme Shareholders have been treated uniformly and New Man consents to the proposals;

    c) the Explanatory Statement properly explains that part of the proposals involving the reduction;

    d) the discernible purpose of the reduction of capital is clear in that it is a central feature of the Scheme; and

    e) the interests of the Company's creditors were considered by Deputy ICC Judge Addy QC at a hearing on 15 May 2019, and the Court was satisfied that creditors would not be prejudiced by the reduction of capital contained in the Scheme on the basis that the issued share capital of the Company following the reduction taking effect would be the same as immediately before it taking effect.

38. On this basis I am also satisfied that it is appropriate to confirm the reduction of capital.

US Securities

39. The Company has some shareholders who are US residents. Under the relevant US securities legislation public tenders to purchase securities held by US residents are prohibited unless such offer or sale (a) complies with the tender offer rules under the relevant US Act or (b) is exempt from or not subject to such requirements.

40. The offer to acquire ordinary shares of the Company from US resident shareholders in accordance with the terms of the Scheme will not be conducted according to the US tender offer rules. In addition, the issuance of New Man Ordinary Shares to be issued under the Scheme will not be registered under the United States Securities Act 1933. Instead, New Man will be relying upon an exemption from the registration requirements of the United States Securities Act 1933 provided in section 3(a)(10) of that Act.

41. The exemption requires a court hearing on the fairness of the Scheme at which all shareholders are entitled to appear and notice has been given. It is also a requirement that the Court is made aware that New Man will rely on the exemption. The evidence indicates that it is likely that the US authorities will consider that the scheme procedure and sanction hearing satisfy the requirements of section 3(a)(10). For my part I confirm that I have been made aware that New Man will be relying on the stated exemption and in that regard will be relying upon my decision to sanction the Scheme.