IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
[2020] EWHC 1003 (Ch)

No.CR-2019-007073

Rolls Building
Fetter Lane
London EC4A 1NL

Tuesday, 31 March 2020

Before:

MR JUSTICE TROWER

IN THE MATTER OF AON PLC

and

IN THE MATTER OF THE COMPANIES ACT 2006

MR ANDREW THORNTON QC (Instructed by Freshfields Bruckaus Deringer LLP) appeared on behalf Aon plc.

J U D G M E N T

(Online hearing)

(Transcript prepared without the aid of documentation)

MR JUSTICE TROWER:

1 This is an application by Aon plc ("the Company") to sanction a scheme of arrangement under Part 26 of the Companies Act 2006 between the Company and the holder of its A Ordinary shares which have a nominal value of one cent each. No shareholders appear before me today and no specific objections to the sanction of the scheme have been received by the Company over and above a small number of shareholders who voted against. The Company is listed on the New York Stock Exchange, where, as I understand the evidence, the latest price was in excess of $160 per share.

2 The scheme is a cancellation and reissue scheme involving a reduction of capital. Accordingly, the Company also seeks confirmation of the reduction pursuant to section 641(1)(b) of the Companies Act 2006 (the "2006 Act"). The convening order for the scheme meetings was made by Deputy ICC Judge Jones on 9 December 2019, at which he directed a single meeting and gave the usual directions for service of an explanatory statement and the process for holding the meetings and matters relating to voting.

3 The Company is the parent of a global professional services firm with operations in over 120 countries. It operates in the commercial risk, reinsurance, retirement and associated sectors.

4 In very brief summary, the scheme involves the cancellation of the scheme shares and the application of the reserve arising on cancellation in paying up new E Ordinary shares. The new E shares will then be issued to a new holding company, Aon Ireland. The consideration for the scheme shareholders is the issue to them of shares in Aon Ireland to be held in the same proportions as they currently hold their scheme shares and they will be listed on the New York Stock Exchange as well.

5 Until recently, the proposal was for the Aon Ireland shares to be issued at a nominal value of $150 per share and then subsequently reduced to one cent through an Irish law approved reduction of capital. As I shall explain shortly, that part of the structure is now proposed to be modified. The effect of the scheme will be to insert a new Irish holding company between the Company and the scheme shareholders. It is part of a corporate strategy which the Company's directors believe will drive longterm shareholder value. From what I have seen, this is a rational and commercially comprehensible view for the board to have taken.

6 The scheme meeting was held on 4 February 2020. I have read the report prepared by the chairman, Mr Lester. It shows that the statutory majorities, as required by section 899 (1) of the 2006 Act, were comfortably achieved. In summary, of those who participated at the meeting 85.71 per cent by number and 99.8 per cent by value of shares voted in favour. As I mentioned, the Company is listed on the New York Stock Exchange and within these numbers were over 183 million shares, being well over 99 per cent of the total number voted, which are held by Cede and Co as nominee for the Depositary Ttust Company, which itself acts as nominee for the underlying beneficial holders. Over 79 per cent of the scheme shares are held that way for more than 330,000 beneficial holders.

7 My task on the application for sanction is to consider the four matters summarised by Morgan J in *Re TDG plc* [2008] EWHC 2334 (Ch), a reiteration of long-established principles described in their best known form in the passage from Buckley on the Companies Acts that was cited with approval (in its earlier form) in *Re National Bank Limited* [1966] 1 WLR 819, 829. The four matters are: first, that the court must be satisfied that the provisions of the statute have been complied with; secondly, that the class of shareholders was fairly represented and that the statutory majority acted *bona fide* and did not coerce the minority; thirdly, that an intelligent and honest person and member of the class concerned and acting in respect of his own interests, might reasonably approve the scheme; and, fourthly, that there is no blot on the scheme.

8 So far as concerns compliance with the terms of the statute, the scheme plainly amounts to a compromise or arrangement within the meaning of section 895. It is also plain that the classes were correctly constituted in that all shareholders are being offered the same deal (an exchange of scheme shares for equity consideration) and no one has suggested to the contrary. The steps to convene the schemes meetings were carried out in accordance with the convening order, including the circulation on 20 December of an explanatory statement in the form of a scheme circular complying with section 897 of the 2006 Act. Finally, as I have already explained, the chairman's report confirms that the statutory majorities were achieved. I am, therefore, satisfied that the requirements of the statute were complied with.

9 The next question is whether the class was fairly represented. On that issue it is appropriate to take into account the extent of shareholder participation at the scheme meeting. As to numbers, the turnout was 23.44 per cent of all shareholders, holding by value 71.4 per cent of all shares in issue. These figures reflect what is relatively standard by way of participating at scheme meetings. There is no indication that members were not acting *bona fide* or were coercing the minority in order to promote an adverse interest and I accordingly consider that the second factor summarised by Morgan J in *TDG* is a matter on which I can be satisfied.

10 The third matter is that the court must be satisfied that an intelligent and honest man, a member of the class concerned and acting in respect of his own interests, might reasonably approve the scheme. On the face of it, this scheme appears to be a reasonable proposal. It has overwhelming support and, in my judgment, has been properly explained in the scheme documentation. Nobody appears before me to say that it is a scheme which does not fulfil the requirement that it is one that an intelligent and honest man acting in his own interest might reasonably approve. I am satisfied as to the third matter referred to Morgan J.

11 As to the fourth matter, I have been unable to identify anything in this case which might be said to constitute a blot on the scheme; nor I should say has Mr Thornton QC or the Company itself.

12 I now turn to a separate issue which relates to two proposed modifications to the scheme. The first is to reduce the nominal value of the new shares to be issued by Aon Ireland from $150 dollar per share to one cent per share. There are two separate reasons for this, as explained in a witness statement made by the Company's chief executive officer, Mr Gregory Case, both of which have arisen in large part as a result of the COVID-19 pandemic (the disruptive impact of which has become much more apparent since the scheme meeting) and the recent collapse in the price of oil.

13 The first reason is to avoid the risk of the nominal value of the new Aon Ireland shares being higher than the share price of the scheme shares, thereby giving rise to a risk that the new shares would not be issued fully paid. That is not the case at the moment, but the extreme volatility in the markets means that it cannot be ruled out. It is plain that if this were to happen it would be highly disadvantageous to the scheme shareholders, not least because the new shares would then be ineligible for listing on the New York Stock Exchange and would, in any event, be inconsistent with clause 2(b) of the scheme itself.

14 The second reason is to facilitate the implementation of the scheme without having to obtain from the Irish court sanction to the Irish reduction of capital that I have already mentioned. The proposal for the Irish reduction was included as part of the original structure and, at the general meeting of the Company held for the purpose of approving (amongst other things) the English reduction of capital, a resolution was passed, albeit contemplating slightly different circumstances, approving the reduction of capital by Aon Ireland by reducing the nominal value of the Aon Ireland shares from $150 to one per cent per share so as to create distributable profits under Irish law. The reason that it is highly undesirable to implement a structure which continues to require such a step is that the evidence shows that there is a real and substantial risk that the Irish courts, in the light of COVID-19 pandemic, will not be in a position to grant the appropriate relief in the time frame previously contemplated.

15 As a result, the board has approved a series of technical legal steps which will enable the same commercial and economic effect to be achieved as would be achieved if the Aon Ireland shares were to be issued at $150 and then subsequently reduced with the confirmation of the Irish court. Those steps have been explained to me by Mr Thornton and are clearly set out in the evidence that has been adduced on the Company's behalf from Mr Case and involve the issue of the Aon Ireland shares at one cent per share.

16 Clause 10 of the scheme is drafted in wide terms to permit modifications where the Company and Aon Ireland consent and the court approves. The test for court approval is not spelt out in clause 10, but Mr Thornton submits that the question is whether the proposed modification would be likely to cause a hypothetical reasonable shareholder to take a different view in relation to the scheme. The cases normally cited on this point (*Re Jessel Trust Limited* [1985] BCLC 119 and *Re Minster Assets plc* [1995] BCLC 200) are not, strictly speaking, authority on precisely the same question (in that they are not concerned with modifications to an approved scheme), but the way in which Mr Thornton has described at test is well-established and has much to recommend it.

17 I would add that there is also some assistance in the judgment of Lloyd J in *In the matter of Equitable Life Assurance Society* [2002] BCC 319, where he said the following:

> "102 …The [modification] provision is salutary, because there may be some immaterial error or oversight, or change of circumstances, that needs to be corrected or covered. But it would be quite wrong to use the provision so as to foist on a class of creditors something substantially different to what has been approved at the relevant meetings."

18 I am satisfied that what is contemplated would not have caused any reasonable shareholder to take a different view in relation to the scheme if it had been put before them. I am also satisfied, looking at the matter having in mind the test articulated by Lloyd J in *Equitable*

Life, that there has been a material change of circumstance and the present situation is far removed from anything that might properly be described as "foisting" on creditors something substantially different to what has been approved at the relevant meeting. I am content to approve this modification.

19 The second proposed modification is very minor indeed. It changes the scheme record time to address the impact of the closure by the pandemic of Companies House London branch and the potential consequential delay in bringing the scheme into effect. It has no material effect on the rights of scheme shareholders. I am also content to approve this modification.

20 Turning then to the application to confirm the reduction, the special resolution was proposed at a general meeting of the Company also held on 4 February and was duly passed with the support of 99.3 per cent of voting shareholders. Deputy ICC Judge Schaffer dispensed with the settlement of a list of creditors by his order dated 19 February and this hearing was advertised in **The Times** on 23 March in accordance with his order. There is no doubt, in my judgment, that the shareholders are treated equitably, that the reduction proposals have been properly explained in the scheme documents and that the creditors are safeguarded. The entire reserve arising on the reduction is being applied in paying up new shares to be issued to Aon Ireland. I am also satisfied that the evidence demonstrates that the reduction is for a discernible purpose, that being the part which the reduction plays in the scheme as a whole.

21 I am also satisfied that the section 641(2A) of the 2006 Act is no impediment to the reduction or the scheme because the scheme plainly falls within the exception provided by section 641(2B), as all of Company's members become members of the new parent undertaking and hold their shares in the same, or substantially the same, proportions.

22 In those circumstances, I propose to sanction the scheme and confirm the reduction of capital as sought by the Company.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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** This transcript has been approved by the Judge **