

Schemes of Arrangement under Cayman Law

This briefing paper explains schemes of arrangement under Cayman Islands law. Under sections 86 and 87 of the Companies Law (2013 Revision) the Grand Court may sanction a compromise or arrangement between a company and its creditors or members or any class of them.

Introduction

In the Cayman Islands, sections 86 and 87 of the Companies Law (2013 Revision) enable the Grand Court to sanction a compromise or arrangement between a company and its creditors or members or any class of them. As will be discussed in this briefing, if the scheme is approved by the necessary majority of creditors or members and is sanctioned by the Court, it becomes binding on those party to the scheme even if they voted against it.

Availability

Schemes of arrangement under Cayman law are potentially available in respect of any company liable to be wound up under the Companies Law. The articles of association of the company must, however, permit the kind of compromise or arrangement proposed by the scheme. The company (or its liquidator where the company is being wound up) or any creditor or member may apply to the Court under section 86.

Procedure: first hearing

The procedure is regulated by Practice Direction No 2 of 2010. Proceedings are commenced by the applicant (which in this briefing is assumed to be the company) presenting a petition seeking the Court's sanction of the compromise or arrangement. At the same time, the company must file an interlocutory summons for an order convening a meeting of the creditors or members, or each class thereof as the case may be. A supporting affidavit with exhibits must be filed in accordance with order 102, rule 20 of the Grand Court Rules 1995 (Revised).

At the first hearing of the summons the Court may order under section 86(1) that the meeting(s) be summoned in such manner as it directs. An important issue the Court must determine is whether it is appropriate to convene meetings of separate classes of creditors or members and the composition of those classes. This is to ensure that each meeting consists of creditors or members whose rights against the company which are to be released or varied under the scheme (or new rights given in their place) are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. The Court will also consider at the first hearing any other issue relevant to the jurisdiction of the Court to sanction the scheme in due course.

If it decides to direct meetings, the Court will consider the proposed time and place of the meetings and the

method of giving notice. The company must also satisfy the Court that the scheme documentation will provide the creditor or member with the necessary information to make an informed decision. It is therefore necessary in addition to the text of the scheme to have prepared an explanatory statement.

Note that special rules apply where the scheme relates to shares or debt instruments listed on an exchange. These include the requirement for an affidavit or expert report setting out the relevant listing rules and practice, and explaining the steps which have been or will be taken to comply.

The meetings

Further to the Court's directions, the notice of the meeting will be sent to the creditors or members (or the classes) along with the text of the scheme, the explanatory memorandum and a proxy voting form.

At the meetings the attendees vote in person or by proxy on whether to agree to the compromise or arrangement. To be successful, section 86(2) requires that a majority in number representing 75% in value of the creditors or members (or if relevant, each class thereof) vote in favour.

Within 7 days after the date of the meetings, the company must file an affidavit sworn by the chairman of the meetings verifying that the notices were sent, and the meetings were held, in accordance with the Court's directions and providing full particulars of the voting.

It should be noted that where a proposed class meeting consists of a small number of persons which the evidence shows are willing to be bound by the scheme, at the first hearing the Court may in its discretion waive the requirement for a formal meeting of that class.

Substantive petition hearing

If the necessary majority of votes is achieved, the substantive hearing of the petition will take place on a date which would have been set before or at the first hearing. Notice of this hearing must be given in the scheme documentation; in addition the explanatory statement should draw attention to the fact that the creditors or members have the right to attend and be heard.

In considering whether to sanction the scheme the Court will consider a number of matters. Firstly, that the Court's directions and the statutory provisions were complied with. Secondly, that the majority fairly represented the class, acted in good faith and are not coercing the minority. Thirdly, that the arrangement is such that an intelligent and honest man who is a member of the class concerned might reasonably approve.

Effect of sanction

Under section 86(2), if sanctioned by the Court the compromise or arrangement will be binding on all creditors or members, or class of creditors or members as the case may be, and upon the company. Importantly therefore the scheme binds dissentients. However, the order sanctioning the scheme will not have effect until a copy has been delivered to the Registrar of Companies for registration. In addition, it is necessary that the order be annexed to copies of the memorandum of association issued thereafter.

Reconstruction and amalgamation

Section 87 of the Companies Law makes specific provision for where the scheme is proposed in connection with the reconstruction of a company or the amalgamation of two or more companies, where any part of the undertaking or property is to be transferred from the company to another company. In such circumstances, in sanctioning the compromise or arrangement the Court is given various powers, such as making provision for the transfer of property or liabilities (including to a foreign company), or for the dissolution without winding-up of the transferor company.

Should you have any queries regarding the above, or if we can be of any assistance, please do not hesitate to contact your usual Campbells contact or any of the following:



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