



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 294 OF 2023 (IKJ)

IN THE MATTER OF SECTION 15 OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF ORDER 102 OF THE GRAND COURT RULES (AS AMENDED)

AND IN THE MATTER OF GREEN ECONOMY DEVELOPMENT LIMITED

IN CHAMBERS

Before: The Hon. Justice Kawaley

Appearances: Mr Tom Wright of Collas Crill for the Petitioner

Heard: 29 November 2023

**Ex Tempore
Judgment Delivered:** 29 November 2023

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Capital reduction sanction petition-no diminution in shareholders' liability or return of capital-governing principles-Companies Act (2023 Revision), sections 14-16

EX TEMPORE JUDGMENT**Introduction**

1. This is a Petition dated on the 27 September 2023, seeking the court's confirmation of a reduction of the Petitioner's issued share capital, pursuant to Sections 15 and 16 of the Companies Act (2023 Revision).
2. The Application today is unopposed, but it seems to me that it is appropriate for brief reasons to be given because of one evidential wrinkle which takes this case somewhat out of the norm.
3. The Petition is very clearly drafted and explains the purpose of the capital reduction sanction which is sought as follows:

“Purpose of Capital Reduction

7. The Capital Reduction is one of a series of steps the Petitioner has taken or intends to take as part of a capital reorganisation (Capital Reorganisation).

8. The purpose of the Capital Reduction is to utilise the credit arising thereof to offset the accumulated losses of the Petitioner as at the effective date of the Capital Reduction.

9. The other steps in the process are a share consolidation, a share premium reduction and a change in board lot size.”

4. The process which has been followed is described in the Petition. Firstly, mention is made of Article 14 of the Articles, to which I was referred in the course of argument. This empowers the Company by special resolution to reduce its share capital in any manner authorized, subject to any conditions prescribed by law.

5. A Special Resolution under Article 1(c), to which I was also referred, requires a vote of not less than $\frac{3}{4}$ of the votes passed by the Shareholders entitled to vote in person or in proxy. The Petition then goes on to describe how announcements were made on the Hong Kong Stock Exchange (“HKSE”) in February 2023, explaining the intention to effect a reduction in share capital as part of a wider Capital Reorganisation.
6. The Extraordinary General Meeting (the “EGM”) was held after a supplemental circular had been issued on the Hong Kong Stock Exchange in connection with a non-executive Director, and at the EGM on 6 April 2023, the relevant special resolution was passed. It is described in the Petition as follows:

“i. the issued share capital of the Petitioner be reduced by (i) eliminating any fraction of a Consolidated Share in the issued share capital of the Petitioner arising from the Share Consolidation in order to round down the total number of Consolidated Shares to a whole number; and (ii) cancelling the paid up capital to the extent of HK\$0.03 on each of the then issued Consolidated Shares such that the par value of each issued Consolidated Share will be reduced from HK\$0.04 to HK\$0.01; and

*ii. immediately following the Capital Reduction, each of the authorised but unissued Consolidated Shares of par value of HK\$0.04 each be sub-divided into four (4) new shares of par value of HK\$0.01 each (**New Shares**) (**Share Sub-Division**), of which 449,999,949 New Shares will have been issued and will be fully paid or credited as fully paid and this remains the amount of the share capital of the Petitioner as at the date of this Petition; and*

*iii. the credits arising in the books of the Petitioner from the Capital Reduction be applied towards offsetting the accumulated losses of the Petitioner (**Accumulated Losses**) as at the effective date of the Capital Reorganisation; and*

iv. the balance of the credit (if any) after offsetting the Accumulated Losses may be applied by the Petitioner in any manner as permitted by all applicable laws and the Articles.”

7. The Petition next recites the actual wording of the Special Resolution passed and then proceeds to deal with issues of creditor protection and shareholder treatment, averring as follows:

“Creditor Protection and Shareholder Treatment

22. The Capital Reduction will result in a reduction in the balance of the share capital line item in the Petitioner's balance sheet and reduce the Petitioner's accumulated losses, to the benefit of the Petitioner and its shareholders collectively.

23. The Capital Reduction will not have any cash flow impact or involve any return on investment to any one or more shareholders, nor will it involve a change in the Petitioner's total equity or the rights of shareholders.

24. The Capital Reduction involves neither diminution of liability in respect of paid up share capital nor payment to any shareholder of any paid-up capital.

25. The Petitioner will continue to be able to pay its debts as they fall due in the ordinary course of business following completion of the Capital Reduction. Consequently, the interests of any creditors will be unaffected by the Capital Reduction.”

8. On 12 October 2023, I granted directions on the Petitioner’s application and those directions involved my determination that the requirement for a list of creditors under Section 15 (2) of the Companies Act should be dispensed with and also involved the following important provisions:

“ 3. Notice of the hearing of the Petition shall be published in the Cayman Islands Compass, the South China Morning Post and the Singapore Straits at least 21 days before the date of the hearing of the Petition; and

4. Any creditor or shareholder of the Petitioner who wishes to oppose the making of the Order for the confirmation of the reduction of capital shall provide notice to the Attorneys for the Petitioner that they intend to appear at the hearing in person or by counsel for that purpose a minimum of three clear days prior to the hearing”

9. Mr Wright confirmed firstly, through the Second Affidavit of Mr Chau Chit, that the relevant advertisements had been placed and secondly that no creditors had actually signified their intention to appear. It was, of course, self-evident that no one appeared at the hearing of the Petition.
10. In the course of argument it was discovered that, in fact, the relevant Singapore newspaper is indeed 'The Straits Times' and so this well-known newspaper was properly chosen to place the advertisement in. The erroneous description of it in the Directions Order was totally immaterial.
11. The evidence set out in the First Affidavit of Mr Chau Chit was in fact sworn, not as sometimes happens, by someone with no direct knowledge of the Company's affairs, but by the Company's Chairman. And his evidence effectively confirmed the central averments made in the Petition.

The Independent Auditor's Report

12. The one matter that was not explicitly mentioned, ultimately for good reason, was that the Audited Financial Statements for the period ending 31 March 2023 in fact contained (at internal pages 42 and 43) a 'going concern' qualification from the Auditors, RSM Hong Kong, which concluded as follows:

"These events and conditions indicate the existence of material uncertainties which may cast significant doubt about the Group's ability to continue as a going concern and to realise its assets and discharge its liabilities in the normal course of business."

13. This aspect of the evidence was in my judgment not significant to and did not undermine in any way the judgment that I made at the directions stage, that the List of Creditors to be dispensed with under Section 15 (2) of the Act. This is because the evidence as to the effect of the capital reduction and it not involving any payout to shareholders for the return of capital, which would potentially prejudice creditors, seems to be unequivocally clear. Nonetheless I do feel that when the Court becomes aware of such a qualification to Audited Financial Statements, the Court should demonstrate for the benefit of any creditors who might in the future feel that this transaction should not have been approved, that in fact the Court did properly have regard to their interests.

Statutory Provisions

14. The law can be stated very briefly, bearing in mind that this is an unopposed application. The relevant statutory provisions are as follows. Firstly, section 14 of the Companies Act (2023 Revision) provides that a company may by special resolution reduce its share capital, and that is the jurisdiction which the Company has exercised in passing the relevant special resolution. That section, has been in a sense expanded by case law to explain how procedurally, a company seeking to reduce its capital must proceed.
15. Section 15 is a provision which facilitates objections by creditors and the standard provision in 15 (2) is that a list of creditors should be prepared. Section 15 (3) of the Companies Act provides that:

“(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital the Court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

16. Here there was neither a diminution of any liability nor any payments to a shareholder and so the case for dispensing the requirement to settle the list of creditors was even stronger. It might be said that, in fact, in dispensing with the requirement for the list of creditors in this case the Court was not actually exercising the jurisdiction by subsection (3) at all. Rather, it was declining to exercise its discretion to require a list under subsection (2) which provides as follows:

“(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and, in any other case, if the Court so directs, subject to subsection (3), the following shall have effect...” [Emphasis added]

17. In this case it seems to me, on reflection, that what happened was that the Court at the directions stage was in reality, confirming that this was not a case where the Court felt that the protections set

out in subparagraphs (a) to (c) of section 15 where engaged. In fact, this was not a case where a dispensation had to be made for special reasons under subsection (3).

18. Finally, in terms of the statutory provisions, section 16 (1) is the primary provision which gives the Court jurisdiction to actually confirm the reduction of capital. It is expressed in the following terms:

“(1) The Court, if satisfied with respect to every creditor of the company who under section 15 is entitled to object to the reduction, that either that person’s consent to the reduction has been obtained or that person’s debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.”

19. That is a somewhat oddly expressed provision because it seems to assume that section 15 will be engaged in every case. In this case of course, Section 15 is not engaged because the preconditions for section 15 operating, namely (1) a diminution of liability in respect of unpaid share capital or (2) the payment to any shareholders of any paid up share capital, or (3) some other case where the Court has directed that section 15 protections should apply, are not met.
20. Those circumstance do not arise in the present case and so, in effect, the Court has a general discretion under section 16 to confirm the reduction of capital.

Case law

21. This position is elaborated upon in case law. And the effect of the cases Mr Wright referred to is that the law implies into the broad statutory provisions certain further protections to ensure that the Court does not allow its processes to be misused by companies seeking approval for a capital reduction.
22. One authority which is definitive is the judgment of Justice Segal in *Re China Agrotech Holdings Limited (in liquidation)* [2019 2 CILR 356]. Mr Wright actually referred the Court to paragraph 16, in which Justice Segal approves the observations of Snowden J as he then was in *Re Man Group Plc* [2019] EWHC 1392 (Ch) at paragraphs 11 and 12. At paragraph 11, Justice Snowden said this:

“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.”

23. Mr Wright then took me through those various factors and submitted that they were all made out in the present case. Firstly, the Company is clearly empowered by its Articles to pass a special resolution reducing its capital. Evidence was adduced that the resolution was passed by nearly 99.9% of those voting, clearly meeting the $\frac{3}{4}$ majority threshold required by the Articles.

24. As far as the equitable treatment requirement is concerned, it was clear, it was rightly submitted, that all shareholders were treated equally because only one class of shareholders was involved. And, thirdly, the procedure adopted by the Company was such as was likely to both fairly inform the shareholders of what the proposal was in its wider ‘Capital Reorganisation’ context, and also to give them an opportunity to attend and vote at the relevant EGM.

25. Fourthly, the interests of creditors were protected, it was said and I agree, by the fact (most significantly) that there was no diminution of the liability of shareholders, nor was there any return of capital to them. It was impossible for me to discern how in real world terms the interests of creditors could be prejudiced in any way by this transaction. On the contrary, the purpose of the transaction appears to be to put the Company on a firmer accounting and commercial footing to

enable it to actually enhance the interests of shareholders and, in that way, to fortify the position of creditors as well.

26. Finally, as far as the discernible purpose is concerned, that purpose was as I have just stated clearly explained.

Conclusion

27. So for these reasons, I grant an Order substantially in the terms of the draft Order which was submitted to the Court in advance of the hearing which provides as follows:

“1. That the special resolution authorising the capital reduction of the Petitioner by the shareholders' extraordinary meeting held on 6 April 2023 is confirmed and approved by the Court.

2. That the Minute in Schedule "A" to this Order is approved.

3. That the Court's order be produced to the Registrar of Companies and an office copy thereof be delivered to it together with a copy of the Minute.

4. That notice of the registration by the Registrar of Companies of the Court's order and the Minute be published once in each of the Cayman Islands, Hong Kong and Singapore within 21 days of such registration.”



THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT