



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2024: No. 172

**IN THE MATTER OF HUAFA PROPERTY SERVICES GROUP COMPANY LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 1981**

RULING

Appearances: Henry Tucker, Harneys Bermuda Limited

Date of Hearing: 20 September 2024

Date of Ruling: 20 September 2024

RULING of Martin, J

Introduction

1. This is an application by Huafa Property Services Group Company Limited (“the Company”) to sanction a Scheme of Arrangement under section 99 (2) of the Bermuda Companies Act 1981 whereby Huajin Investment Company Limited, a company incorporated in Samoa, (hereafter referred to as “the Offeror”) is to acquire all the shares of the Disinterested Shareholders (defined as all the shareholders of the

- Company who are neither the Offeror nor parties connected to the Offeror (referred to as the “Concert Parties”)) by way of a cancellation of the Disinterested Parties’ shares (which total 5,771,515,040 fully paid common shares in the Company) and a re-issue of an equivalent number of fully paid common shares to the Offeror on the Effective Date of the Scheme.
2. The Company is a public company listed and traded on the Hong Kong Stock Exchange (the “HKSE”). The Offeror is already the holder of 38.76% of the common shares of the Company and wishes to acquire the rest of the shares held by public shareholders other than those connected to the Offeror and thereafter de-list the Company and take it private. The purpose of the Scheme is to achieve the result that the Offeror will *replace* the Disinterested Parties as shareholders of an equivalent number of common shares, but without making an offer to purchase those shares directly from the Disinterested Shareholders.
 3. Counsel for the Company explained that there are a number of reasons why this structure is more efficient from an administrative point of view, as well as for managing the costs of achieving the acquisition of control of all the shares of the Company, prior to de-listing the Company from the HKSE and taking the Company private. These reasons do not need to be recorded in detail, save to note that the principal advantages are that the Scheme will bind all shareholders of the Disinterested Shareholder class so that the Offeror does not need to negotiate with “hold-out” shareholders, and that there will be a substantial saving in the costs that would normally be paid to the Transfer Agent upon transfer of the shares through the CCASS system¹.

Compliance with the Convening Order and Scheme Meeting Approval

4. I have read the first affirmation of Ng Chung Yan dated 21 August 2024, the first affirmation of Guo Shihai dated 28 August 2024, the first and second affidavits of Cheng Kit Hung dated 28 June and 28 August 2024 and the documents exhibited to

¹ The Hong Kong Central Clearing and Settlement System.

them (so far as necessary or material) and I am satisfied that the Company has complied with all the relevant terms of the Order granting leave to convene the Scheme Meeting dated 12 July 2024.

5. The affirmation and affidavits supporting the application also confirm that the Scheme Meeting was properly convened. At the meeting approximately 44.18% of the class of Disinterested Shareholders were present in person or by proxy or by corporate representative and cast their votes through their authorised nominees². Those attending voted overwhelmingly (99.52%) in favour of the resolutions to give effect to the Scheme in the terms presented without modification. I am therefore satisfied that the necessary thresholds under s 99 have been met.

Purpose of the Scheme

6. The purpose of the Scheme is to transfer ownership of the Company to the Offeror (and the Concert Parties) for the payment of a consideration that the Disinterested Shareholders have voted to accept. It is not for the court to second-guess the exercise of the shareholders' judgment as to what is in their commercial interest, but it is relevant to note that the evidence supports the view that the offer price represents a premium on the average historic trading values of the shares on the market, so that an honest and reasonable businessperson might properly decide it was in his or her interest to vote in favour of the Scheme.

Legal effect of the Scheme

7. I had some difficulty at first in understanding the mechanism by which the transfer of ownership to the Offeror was to take place. On the face of it, it appeared that the

² The Disinterested Shares are dematerialised form and are registered in the name of and held by a nominee called Tricor Investor Services Limited ("Tricor") who is the Registrar and Transfer Agent appointed by the public shareholders. Tricor voted the shares in accordance with the instructions of the relevant ultimate beneficial owners of the Scheme shares. 89 Disinterested Shareholders holding 2,537,878,328 common shares voted in favour and 12 Disinterested Shareholders holding 12,360,072 common shares voted against. I am satisfied that participation by the ultimate beneficial owners of this number of shares represents a quorum for the purposes of bye law 61 (2) of the Company's bye laws.

Company was proposing to cancel the Disinterested Shareholders' shares without having a sufficient surplus to do so and that the Offeror was to be issued new fully paid shares by the Company without paying in the appropriate capital contribution. I was concerned that this procedure would contravene the normal capital maintenance rules and the statutory rules as to the cancellation of shares and reduction of capital under section 46 of the Bermuda Companies Act 1981 and would therefore be *ultra vires* and void.

8. However, after more careful analysis, aided by the efforts of counsel³, I am satisfied that these concerns do not arise. I said I would explain my reasoning in this short ruling.
9. Although the language used to describe the steps of the transaction is a little opaque, and the steps are said to happen “contemporaneously”, I find that the substance of the transaction is to the following effect.
10. First, the Company has resolved⁴ to cancel the Disinterested Shareholders' shares for the price agreed per share of HK\$ 0.29. In so doing the Company has incurred an obligation to pay that sum per share to each of the Disinterested Shareholders for the number of shares ultimately held by the beneficial owners thereof. When the cancellation of the Disinterested Shareholders' shares takes effect, this will produce a reduction in the issued shares of 5,771,515,040. This has been described as a “reserve”. Although I understand what is meant by this short-hand expression, namely a reduction in the number of issued shares, I think the term is liable to be confusing in this context.
11. Second, the Offeror has undertaken the obligation to satisfy the Company's obligation pay the Disinterested Shareholders their respective entitlements upon the cancellation of these shares. This is not by way of loan from the Offeror to the Company but, under the ordinary rules of subrogation, the Offeror will stand in the place of the Company,

³ It would have been helpful if the legal mechanism and the reasons for adopting it had been explained in more detail in the application for leave to convene the Scheme Meeting.

⁴ The Special Resolution was passed on 28 August 2024 but has not yet been implemented: see page 218 of Exhibit GSH1 to the First Affirmation of Guo Shihai.

and the Company will be indebted to the Offeror to an equivalent amount of the payments that the Offeror has made to the Disinterested Shareholders.

12. Third, once the payments have been made to the Disinterested Shareholders (or provided for in a fund held for that purpose), the Company will issue to the Offeror new fully paid common shares equivalent to the number that have just been cancelled. This issue of new shares will be in satisfaction of the Company's obligation to repay the Offeror the amount it has paid to the Disinterested Shareholders on the Company's behalf.
13. Fourth, once these steps have been completed, the appropriate entries in the Company's capital and share premium accounts will be made to reflect an equivalent issue of shares at par and record the relevant share premium. At the end of the process, the Company's capital account and share premium account will balance, i.e. be exactly the same as they were before the transaction.
14. In this way the Company has achieved the capital reduction at the Offeror's expense and has repaid the Offeror by issuing the new shares, in what may be seen as (in substance) a "debt-for-equity swap", which a common financing mechanism.
15. There are some obvious risks to all parties that something could go wrong in the process, but these are risks the Company and the Disinterested Shareholders have decided (in the exercise of their commercial judgment) that they are willing to take.
16. It is said at paragraph 35 of the First Affirmation of Pu Yonghao that in effect at the end of the transaction there has been no reduction in capital at all. Although I understand what is meant by this expression, it is apt to mislead. The Company's reduction of capital (described in the first step of the transaction above) is only valid if all the normal steps that are required to be taken under section 46 of the Companies Act 1981 are in fact taken (and counsel has assured the Court that these steps will be taken). For the avoidance of any doubt, I direct that as a condition subsequent to the grant of the Court's sanction that there must be compliance with all the requirements of section 46 of the Companies Act that apply to a conventional reduction of capital.

17. The Court has been assured that the Company is presently solvent and will remain solvent after the Effective Date of the Scheme and that creditors' rights will remain unaffected⁵.

Conclusion

18. I therefore give the Court's sanction to the Scheme in accordance with the prayer in the Petition and will sign the draft Order in the terms submitted to the Court.

Dated 20 September 2024



**THE HON. ANDREW MARTIN
PUISNE JUDGE**

⁵ See para 35 of the First Affirmation of Pu Yonghao.