

Companies Law. The meeting was duly held and, unsurprisingly, HBEU (unanimously) approved the resolution.

4. Such approval was not, however, the end of the matter. PBCI has gone to great lengths to publicise the Scheme in order both to satisfy the Court that it is appropriate to sanction the Scheme and also to give every opportunity for anyone affected by it to have the details explained and to consider any opposition or objections to it. I describe the steps taken in more detail below. In summary, the Applicants placed official publications in the customary manner in the three main islands of the Bailiwick and they notified customers, creditors, suppliers and counter parties of PBCI. As an additional safeguard, Ernst & Young LLP were instructed as an independent auditor to report to the management of PBCI and HBEU on matters drawn to their attention in connection with the proposed transfer of business. Their report was satisfactory. A number of relevant authorities within the Bailiwick were also notified of the Scheme. They included the Guernsey Financial Services Commission (“GFSC”), who raised no objection to the Scheme. PBCI and HBEU Guernsey branch are both licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and for the provision of money service business as referred to in the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007. HBEU Guernsey branch is licensed as an insurance intermediary.
5. The extensive consultation produced a total of only 17 enquiries from third parties, all of which were satisfactorily addressed. No one attended the hearing in the Royal Court to oppose the application to sanction the Scheme.

The Law

6. The provisions for schemes of arrangement set out in Part VIII of the Companies (Guernsey) Law, 2008, as amended, (the “Companies Law”) have been considered by the Royal Court in a number of cases and, most recently, by the Court of Appeal in Puma Brandenburg Limited v Aralon Resources and Investment Company Limited and others (Court of Appeal, Judgment 27/2017, unreported, 18 May 2017) dismissing an appeal against a decision of the Royal Court in In the Matter of Puma Brandenburg Limited and In the Matter of a Scheme of Arrangement Pursuant to Part VIII of the Companies (Guernsey) Law 2008 (Royal Court, Judgment 9/2017, unreported, 24 February 2017).
7. Section 105 (1) of the Companies Law states that Part VIII of the Law applies “*where a compromise or arrangement is proposed between a company and – (b) its members*”. Here HBEU is the only member of PBCI and HBEU is the other party to the Scheme. In a number of decisions the Royal Court has held that “arrangement” is a broad term to be interpreted widely. That proposition was approved by the Court of Appeal in Puma at paragraphs 46 and 47 of the judgment of Bompas JA:
 - “46*There is no definition of the words “compromise or arrangement”, although section 105(2) explains that an arrangement includes “a reorganisation of the company’s share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both of those methods”.*
 - 47 *As a matter of principle the expression “arrangement”, used in Part VIII of the Companies Law to describe types of scheme which may be implemented pursuant to that Part, is broad. This proposition, submitted to us by Advocate Greenfield on behalf of the Company, is well established.*”
8. Given that broad definition, I am satisfied that an arrangement whereby the vast majority of the business activity of PBCI is proposed to be transferred to HBEU is an “arrangement” for the purposes of Part VIII of the Companies Law.

9. The Courts have developed a number of principles, or guidelines as the Court of Appeal correctly described them, to assist in deciding whether to exercise judicial discretion in favour of approving a scheme. However, before they can be considered, there is a threshold consideration which was explained by the Court of Appeal in paragraph 87 of Puma:

“there is a threshold, first, consideration which is not part of the exercise of any discretion: this is, rather, that the occasion for the exercise of the discretion must have arisen because the statutory requirements have been complied with.”

10. The statutory requirements to which the Court referred are those set out in Part VIII of the Companies Law, specifically in respect of the convening of a meeting of the creditors or members (as the case may be) and the formalities in connection therewith as required under sections 107 and 108. On the 9th June I ordered that a meeting be held and that it could be conducted by way of a written resolution of HBEU as the sole member of PBCI pursuant to section 175(2)(b) of the Companies Law. In the second Affidavit sworn by Edward Christopher Bloor on 31st July 2017, he detailed the steps that had been taken to comply with the Court’s directions and included within the exhibits a copy of the written resolution approving the Scheme on behalf of HBEU as the sole member of PBCI. I am satisfied that all the statutory requirements have been complied with in accordance with my earlier Order and, consequently, the Court’s discretion to consider the Scheme is engaged and it may be approved if I am so minded.
11. The guidelines, or principles, that govern the exercise by the Court of its discretion are to be found in paragraphs 81-83 of the judgment of Bompas JA in Puma:

81. “At paragraphs 34 and 35 of his judgment the Bailiff set out the principles which guide the exercise of the discretion given by section 110 of the Companies Law when the Court is considering whether or not to sanction a scheme. These he explained in the following terms:

“34. By virtue of section 110(1) of CGL, when deciding whether to approve a scheme of arrangement, the Court has an unfettered discretion but, as always, the discretion must be exercised judicially. The factors to be considered in the exercise of discretion include, but are not limited to, those set out in section 110(2) of CGL. In Re Montenegro Investments Limited (In Administration) [2013-14] GLR345 and in Re Assura Group Limited (unreported 27th January 2015), the Royal Court has set out the following criteria as matters which must be established by the applicant Company to the satisfaction of the court:

- (1) Whether the class of members was fairly represented by those who attended the court meetings and that the statutory majority are acting bona fide and are not coercing the minority in order to promote interest adverse to those of the class whom they purport to represent;*
- (2) The scheme is such that an intelligent and honest man, a member of the class concerned and acting in respect of his interests, might reasonably approve; and*
- (3) There is no ‘blot’ on the scheme, which it is submitted is simply another way of saying that the court may take any other factor into account in exercising its discretion.”*

82. The Bailiff also reminded himself, by reference to extracts from the judgments of Richards J and Morgan J in, respectively, Re Telewest Communications plc (No.2)

[2005] 1 BCLC 772 and Re TGC plc [2009] 1 BCLC 445, and also from paragraph 425.54 in “Buckley on the Companies Acts”, Vol 1, that the Court will be slow to differ from the view of the majority at a court meeting to consider a scheme of arrangement, at any rate where the scheme is such that an intelligent and honest person might reasonably approve.

83. The three principles referred to by the Bailiff were long ago expounded by the English Court of Appeal in Re Alabama, New Orleans, Texas and Pacific Junction Railway Company [1891] 1 213, and then by Lindley LJ in Re English, Scottish and Australian Chartered Bank [1893] 3 Ch 385 at 408-9. They have been restated many times, including in Guernsey by the Bailiff in Re Montenegro Investments Ltd [2013-14] GLR 345. They are, however, guidelines, developed by the courts: they should not be treated as an enactment.”

12. In the present matter, there is no issue with the first two of those principles. We are not concerned with either a class of members or with a decision taken by a majority only of members attending the court meeting. HBEU is the sole member, as I have said and it clearly understands the Scheme. The real issue for the Court is whether there is any ‘blot’ on the Scheme.
13. The Applicants have gone to considerable lengths to demonstrate that there is no blot on the Scheme and no impediment which should cause the Court to have grounds for refusing to sanction it. In his two Affidavits, Mr Bloor has given evidence of the good standing of HBEU and its parent company, HSBC Holdings Plc (“HSBC Holdings”), as well as details of the good standing of PBCI in order to demonstrate that the activities of the latter can be absorbed into HBEU without any detriment to its business. He has also described the steps taken to inform third parties of what is proposed, of the steps taken to answer any concerns that any of them may have and to make them aware of the court date so they could attend and object in person if they wanted to do so. In the event, there was no opposition to the application for sanction of the Scheme. I will set out, for the record, the actions taken as set out in the affidavits but without repeating the details.
14. Mr Bloor exhibited the 2016 Annual Report and Accounts for HBEU and its subsidiaries together with the credit ratings of HBEU and HSBC Holdings to show that HBEU was in good financial standing. He described the regulatory status of HBEU both in the UK and in Guernsey through its Guernsey branch. He then explained the financial status of PBCI by reference to the 2016 audited financial statements (but not its credit ratings as it is not separately rated) and its regulatory status in Guernsey (it is no longer regulated in any other jurisdiction). The conclusion submitted by Advocate Williams is that both entities have strong financial covenants and are in good standing with the regulators.
15. The Applicants notified all customers of PBCI whom they were able to contact either by letter or email enclosing a Statement and Customer Guide with the letter of notification. Material counterparties and creditors whose agreements are to be transferred were also advised. Notices publicising the Scheme were placed in La Gazette Officielle, the Alderney Gazette and the Sark Public Notice Box. A small number of customers sought further information or clarification of the arrangements, none of whom raised any concern or objection to the Scheme.
16. The regulators concerned that is to say, the GFSC, the Jersey Financial Services Commission and the Isle of Man Financial Services Authority were all notified so far as was necessary in each of their respective jurisdictions. They have all indicated they raise no objection to the Scheme. A number of other potentially interested authorities were also notified, none of whom raised any concerns.

17. Ernst and Young were instructed to provide an independent assessment of the Scheme and its potential impact and, as I have said, on the information provided to them, they raised no concerns as to the economic impact of the Scheme. Their substantive report was exhibited to Mr Bloor's first affidavit and an updated letter was produced to me at the court hearing.
18. PBCI currently has three wholly owned subsidiaries, one of which has three subsidiaries and the other has one subsidiary. Two of the direct subsidiaries, HSBC Trustee (Guernsey) Limited and HSBC Trustee (C.I.) Limited conduct a range of fiduciary related business and are licensed to do so. The business of the former company is in the process of being transferred to the latter but it is intended that both companies and their subsidiaries will transfer to HBEU under the Scheme. The third direct subsidiary, Republic Nominees Limited whose principal activity is the holding of investments as nominees for third parties will also be transferred. Mr Bloor confirmed that the activities of the subsidiaries will be unaffected by the transfer.
19. The Scheme includes provisions for dealing with a number of residual assets and liabilities which cannot or will not be transferred with the other business on the date on which the Scheme becomes effective (which is anticipated to be 00:01 hours on 1 October 2017). The categories of residual assets and liabilities are detailed in the particulars of the Scheme. They include those which the Royal Court does not have jurisdiction to transfer and those the transfer of which does not have recognition by the laws of another relevant jurisdiction. The proposal is that they will be held on trust for HBEU Guernsey branch until such time as they are transferred.
20. Separate from the residual assets and liabilities are a number of categories of assets and liabilities that are excluded from the Scheme and hence are not intended to be transferred under the Scheme either at the effective date or at any time thereafter. A significant exclusion from the transfer is the benefit of the contracts of employment with the employees of PBCI who are being treated separately as I explain later in this judgment. Also excluded are: (i) assets relating exclusively to Corporate Trust and Loan Agency transactions which are excluded mostly due to their complexity and because most are subject to documentation governed by foreign law; (ii) any PBCI customer accounts which are sanctioned and / or which are subject to restraint orders and have been refused consent to transfer by the Policy and Resources Committee or the Guernsey Financial Intelligence Service; (iii) five Guernsey Class B collective investment schemes of which PBCI is the trustee are excluded so as to avoid any potential adverse legal or tax consequences for the Class B scheme beneficiaries; and (iv) the total equity (including all share capital) of PBCI is excluded and will be released.
21. There are separate provisions concerning any proceedings or claims of any nature relating to the transferring business in respect of which further steps, including possibly further orders of the Royal Court, may be required.

Employees

22. There are some 90 employees of PBCI a few of whom, probably three, will be made redundant while the others will become employees of HBEU. Their accrued pension benefits together with any share option awards will be transferred to HBEU. Instead of transferring the benefit of the employee contracts under the Scheme, personal arrangements are being made with the employees who are to transfer to HBEU. I was told the principal reason for doing so is that the Applicants are responsible employers who wish to treat with the employees through a process of consultation and contractual change.
23. However, there is also a potential legal reason for excluding employees from the scheme of arrangement. Advocate Williams drew to my attention a decision of the House of Lords in Nokes v Doncaster Amalgamated Collieries Limited [1940] A.C. 1014 which, by a majority

of 4 to 1, allowed an appeal holding that in the amalgamation of two companies under section 154 of the Companies Act 1929 a contract of service does not automatically transfer to the transferee company. Section 154 of the Companies Act 1929 is in similar terms to Part VIII of our Companies Law but, being a decision of the House of Lords, it is not binding on the Royal Court.

24. The dissenting speech delivered by Lord Romer was carefully considered in the High Court of Justice of the Isle of Man in In the Matter of Barclays Private Clients International Limited and Barclays Bank Plc CHP 16/0044 when sanctioning a scheme for the transfer of business between two companies in the Barclays Bank group. Deemster Doyle held that the House of Lords' decision was not binding in the Isle of Man and declined to follow the speeches of the majority as he preferred instead the dissenting speech of Lord Romer for the reasons stated in his judgment.
25. Fortunately, as the employment contracts are excluded from the Scheme, there is no need for me to consider which of the speeches in Nokes should be regarded as persuasive under the law of this jurisdiction. If it were necessary to do so I am inclined to the view that, for similar reasons to those given by Deemster Doyle, I would prefer that of Lord Romer. The majority of speeches had regard to the personal nature of a contract of service between employee and employer. That was in 1940 since when the United Kingdom Parliament has provided considerable statutory protection for employees, including in situations where their employment is proposed to be transferred to another company. It is quite possible that the case would not arise on the same facts today and even if it did, an English Court might take a different view.
26. In preferring the opinion of Lord Romer, I adopt his broad definition of the word "property". It is defined in section 111(7) of the Companies Law as including "*property, rights and powers of every description*". The same word is defined in the same terms in the Act of 1929 about which Lord Romer said (at page 1043): "*I cannot for myself think of any item of a company's undertaking and assets that would not be covered by the expression "property, rights and powers of every description".*" Such a broad definition would include the benefit of contracts of employment if there were a proposal to transfer them under the terms of the Scheme, which there is not. I should add, for the sake of completeness, that with regard to the assets and liabilities that are proposed to transfer to HBEU Guernsey branch, I am satisfied they fall within the definition of "property" and hence of what is permitted to be transferred under Part VIII of the Companies Law.

Conclusion

27. In summary, the Applicants went to considerable lengths to publicise the Scheme to all persons who might be affected by it, none of whom have raised any concerns. The Applicants have adduced evidence to the Court to seek to establish that there will be no adverse consequences if the Scheme were to be sanctioned. As a result, I am persuaded that on the evidence before me, there is no 'blot' on the Scheme. The threshold consideration that all statutory requirements be complied with has been satisfied and the other guidelines to which the Court is to have regard when sanctioning a scheme of arrangement are not in issue. Consequently, in the exercise of my discretion, I was minded to sanction the Scheme at the hearing on 4th August for the reasons given in this judgment.