

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Case No. CR-2022-000657

NCN: [2022] EWHC 1679 (Ch)

The Rolls Building
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Fetter Lane
London
EC4A 1NL

Thursday, 19th May 2022

Before:

THE HONOURABLE MR JUSTICE MILES

IN THE MATTER OF INVESTEC PLC

MR M MOORE QC appeared on behalf of the Claimant Company

JUDGMENT
(Approved)

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Mr Justice Miles:

Introduction

1. Investec plc (“the company”) seeks an order under Section 648 Companies Act 2006 confirming a reduction of the company’s share premium account by £251 million and, under Section 899 Companies Act, sanctioning a scheme of arrangement.
2. The object of the scheme is to implement one leg of a proposal whereby the shareholders of the company and Investec Limited, a company incorporated in South Africa with which it is dual listed, receive shares in Ninety One plc, a UK company, or in Ninety One Limited, a company incorporated in South Africa with which Ninety One plc is dual listed. Each shareholder in either of the Investec companies will receive shares in either Ninety One company on the basis of 0.13751 Ninety One shares for each Investec share held by them. Fractional entitlements arising as a result of the application of that ratio will be settled by a cash payment.
3. The scheme has been designed to cater for issues arising from the dual listed nature of the two Investec companies and of the two Ninety One companies and the fact that they operate across two jurisdictions and stock exchanges.

Outline of the scheme and proposed distribution

4. Ordinary shareholders in the company whose names are entered on the United Kingdom register are to receive shares in Ninety One plc from the company by way of return of capital, whereas ordinary shareholders in the company whose names are entered on the branch register of members in South Africa and all ordinary shareholders in Investec Limited, the South African company, will receive Ninety One Limited shares from Investec Limited by way of a dividend *in specie*.
5. There are differences in treatment of the shareholders of the company under the scheme: shareholders on the UK register will receive Ninety One plc shares from the company by way of return of capital, whereas shareholders on the South African register will receive Ninety One Limited shares from Investec Limited by way of dividend *in specie* (via a dividend access share).
6. There are therefore two differences of treatment. The first is in the shares to be received by shareholders on the South African register and the second is in the legal mechanism for the transfer and the identity of the transferor of those shares. However, as is spelt out in the evidence served by the company, the company considers, and I am satisfied, in the light of the dual listing arrangements of both Investec companies and both Ninety One companies, that these are differences of form and not of substance and that the economic benefit to be transferred to the various shareholders will be identical.
7. The delineation of the classes of shareholders summoned to consider a members’ scheme is fundamental to the jurisdiction of the court to sanction that scheme. The

question of class composition was addressed in full at a convening hearing before Bacon J on 15 March 2022. She convened a single meeting of scheme shareholders. Under the provisions of the *Practice Statement (Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006)* [2020] 1 WLR 4493, where a court has considered class composition at the convening stage and it is satisfied that the persons affected had the ability to present arguments, the court, at the sanction hearing, will not generally revisit the question of class composition. It will not expect to do so unless it considers, for some reason, that the decision made at the convening hearing was plainly wrong. I see no reason for doubting the decision of Bacon J on 15 March 2022. No objecting shareholders have appeared before me to suggest any different conclusion.

8. At the scheme meeting on 28 April 2022, the resolution approving the scheme was passed by majorities in both number and value, namely 98.1% and 99.9% respectively. The turnout was 80.63% by value and 5.67% by number, which was broadly consistent with the usual turnout at general meetings of the company.
9. A general meeting was also held on 28 April 2022 at which, approved by the necessary majorities, a resolution reducing the share premium account of the company by £251 million and other resolutions necessary to effect the transaction were passed. Investec Limited offers, through counsel for the company, an undertaking to implement the scheme as set out in Recital E to the scheme.

The background and the scheme in more detail

10. As already explained, the company is part of a dual-listed company arrangement with Investec Limited. The company and Investec Limited operate as a single corporate enterprise. Each has a separate board of directors, but these boards comprise the same persons. The boards, in addition to their duties to the company concerned, have regard to the interests of shareholders of both the company and Investec Limited as if the two companies were a single economic enterprise. The economic and voting interests represented by an ordinary share of one company relative to the economic and voting interests represented by an ordinary share in the other company, are determined by reference to an equalisation ratio of one to one, so that any ordinary share in either the company, or Investec Limited, gives the holder an equivalent effective economic and voting right in the Investec group as a whole.
11. As part of the dual-listed structure, dividend access shares have been issued by each of the company and Investec Limited to enable each of them to make distributions on the relevant dividend access shares directly to the other company's shareholders as part of the arrangements to ensure that each Investec shareholder in the group receives equivalent economic rights in the Investec group as a whole.
12. The company's issued share capital consists of ordinary shares, preference shares, and certain special shares including the dividend access shares.
13. The scheme only affects the holders of ordinary shares. The ordinary shares are listed

on the premium listing segment of the official list of the FCA and traded on the London Stock Exchange's market for listed securities in the case of the company, with a secondary inward listing on the main board of the Johannesburg Stock Exchange. The ordinary shares in Investec Limited have a primary listing and are admitted to trading on the main board of the Johannesburg Stock Exchange with secondary listings on other exchanges in Southern Africa.

14. In March 2020, the Investec Group implemented a demerger of its asset management business, known as the Ninety One business, which was effected in part by the company via a scheme of arrangement approved by the court in this jurisdiction at that time. At that time, the Ninety One business comprised two principal holding companies, Ninety One plc, a public limited company incorporated under the laws of England and Wales, and Ninety One Limited, a public company incorporated in South Africa, and their respective subsidiaries. Upon the demerger taking effect, a dual-listed structure, equivalent in all material respects to that of the Investec dual-listed structure, was implemented between Ninety One plc and Ninety One Limited.
15. On the demerger taking effect, the ordinary shares in Ninety One plc were admitted to trading on the London Stock Exchange with a secondary inward listing on the Johannesburg Stock Exchange. The ordinary shares of Ninety One Limited were admitted for primary listing and to trading on the main board of the Johannesburg Stock Exchange.
16. As of 4 March 2022, the Investec group retained a shareholding in the Ninety One companies of approximately 25% of the total combined issued share capital in Ninety One, through holdings by the company and Investec Limited. In November 2021, Investec announced that it would distribute up to 15% of the combined issued share capital of Ninety One to its shareholders. Under the proposed distribution, each ordinary shareholder in the Investec companies is entitled to receive equivalent economic benefits for each share held by them in the Investec companies on the basis of the equalisation ratio of one to one. Accordingly, the distribution will be structured such that each shareholder in the Investec companies will receive 0.13751 Ninety One shares for each ordinary share in Investec plc or Investec Limited held by such shareholder.
17. As already explained, the proposal is that Investec Limited will distribute Ninety One Limited shares to both ordinary shareholders of Investec Limited and to the holders of ordinary shares in the company whose holdings are entered on the South African register of the company, and the company will distribute Ninety One plc shares only to holders of its ordinary shares whose holdings are entered on its UK register.
18. The details of the distribution are set out in the evidence and it is not necessary to go into them further here, but I note at this stage that the legal mechanism by which the company will transfer Ninety One plc shares to the UK register scheme shareholders is by a repayment of capital upon a reduction of the share premium account of the company under the scheme and I shall return to that element in a moment.

19. There are also minor amendments to be made to the terms of a trust deed relating to the South African dividend access share in order to effect the scheme. This required approval by the shareholders of both the company and of Investec Limited, voting separately, which approval was obtained at general meetings of the companies. Regulatory consents were also required and have been obtained.
20. Following the proposed distribution, Investec Limited will no longer hold any Ninety One Limited shares and the company will retain a shareholding of approximately 14.82% of the total issued share capital of Ninety One plc representing just over 10% of the combined issued share capital of Ninety One.
21. As just mentioned, the scheme provides for the company's share premium account to be reduced by £251 million with part thereof being repaid and such repayment being satisfied by the company transferring Ninety One plc shares to UK register scheme shareholders. I have already explained that in the event that the number of ordinary shares held by the scheme shareholder does not result in a whole number of Ninety One shares on the basis of the distribution ratio set out in the scheme, there will be cash payments in respect of fractional entitlements. The balance of the amount by which the capital is to be reduced will be retained by the company and available for future distributions and other purposes. The amount of this balance will depend on the Ninety One share price at the relevant time.
22. In addition, pursuant to the scheme, the Company will procure and Investec Limited, which undertakes to be bound by the scheme, agrees that in the case of the South African register scheme shareholders, the distribution of Ninety One shares will be effected by the distribution *in specie* of Ninety One Limited shares upon the relevant date via the dividend access share.

Should the court sanction the scheme?

23. It is well established that at a sanction hearing the court should consider four matters, namely (a) the court must be satisfied that the provisions of the statute have been complied with, (b) the court must be satisfied that the class of shareholders, the subject of the court meeting, was fairly represented by those who attended the meeting and the statutory majority were acting bona fide and not coercing the minority in order to promote interests adverse to those of the class they purport to represent, (c) an intelligent and honest person and a member of the class concerned in acting in respect of his own interest might reasonably approve the scheme, and (d) there must be no blot on the scheme. I address these four heads in turn.
24. I am satisfied first that the statutory provisions have been complied with. The arrangement, in my judgment, involves the distribution of assets of the Investec companies to its members and contains the necessary ingredients of "give and take" to constitute an arrangement. The principles relevant to class constitution under Part 26 Companies Act were addressed in the judgment of Bacon J and no person appears before me today to argue that the convening of a single class of holders of scheme shares was wrong and, as I have already said, I see no reason to revisit that decision.

25. The evidence shows that the scheme document was distributed to the shareholders in the manner specified in the order. The notice of the court meeting properly sets out the interests of the directors. The scheme document, including the explanatory statement, explained the scheme properly and adequately and complied with the requirements of the statute.
26. I note in passing that the company made an announcement on 21 April 2022 to give two minor updates to shareholders. Neither of those materially affected the scheme.
27. The necessary majorities were obtained at the scheme meeting as already set out.
28. I am satisfied, secondly, that the class of scheme shareholders was properly represented at the meeting. Members voted on the basis of properly disclosed information contained in the scheme document, there were no connectivity problems during the meeting, and the court can be satisfied that appropriate arrangements were maintained to enable the shareholders to consult together. There is nothing to suggest that any person voting in favour of the scheme at the court meeting was promoting interests adverse to those of the class concerned.
29. I am satisfied, thirdly, that the scheme is one which an intelligent and honest member might reasonably approve. The scheme's terms are set out fully in the scheme document. The commercial background to the proposed transaction is fully explained in the materials made available to the relevant members.
30. I am satisfied finally that there is no blot on the scheme. I can see no technical, or legal, defect such as internal inconsistencies or the infringement of some mandatory legal provision.
31. I record that I have considered the fairness of the scheme. It has been open to all shareholders to appear and object and none has done so. I have also been made aware that the company intends to rely on the exemption provided for in Section 3(a)(10) of the United States Securities Act of 1933 (as amended) concerning registration requirements. For these various reasons, I consider it appropriate to sanction the scheme.

Should the court confirm the reduction of capital?

32. The jurisdiction of the court is derived from section 641 et seq. of the Companies Act.
33. On 6 May 2022 Deputy ICC Judge Greenwood made an order relating to the resolution to reduce the share premium account of the company. He gave various directions and adjourned the hearing to this date to enable any creditor, or shareholder, of the company who desired to object to attend and be heard. No such creditor or shareholder has appeared.
34. I accept Mr Moore's submission that there are five basic matters on which the court

will require to be satisfied under this head. (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, or does not otherwise prejudice them. (c) The proposals must have been properly explained to the shareholders so that they can exercise informed judgment upon them. (d) The resolution must be proposed for a discernible purpose. (e) The creditors of the company must not be prejudiced.

35. I am satisfied that each of these criteria is satisfied in the present case.
36. The special resolution required by Section 641(1)(b) of the Companies Act has been properly passed as is recited in the order made on 6 May 2022.
37. The reduction of the share premium account affects all shareholders uniformly.
38. The scheme document properly explains the proposed reduction.
39. The reduction has a discernible purpose; indeed it is an essential step in the distribution.
40. I am satisfied that the creditors of the company will not be prejudiced by the reduction. The company satisfied Deputy ICC Judge Greenwood on 6 May 2022 that the no real likelihood test in section 646(1)(b) was satisfied on the basis of evidence and that was recorded in his order. Further, the hearing of the application before me today was advertised in The Times on 11 May 2022, in accordance with Judge Greenwood's order, and no objector has appeared today to oppose the reduction. I see no reason to revisit the conclusion reached by Judge Greenwood in that regard on 6 May 2022.
41. I am satisfied that I should confirm the reduction of the share premium account of the company.

A timing point

42. I note that there is a gap between the date of this hearing, 19 May, and the date of the scheme becoming effective, namely 30 May, which is somewhat longer than usual. The reason for this arises from the settlement requirements of the Johannesburg Stock Exchange. It was explained to me that the same issue arose on the demerger, on the earlier scheme. The court was informed on that occasion and was content with the position. Furthermore, no practical difficulties were encountered then in relation to the time gap and none is expected on this occasion.

Disposal

43. I will make an order in the terms sought.

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This transcript has been approved by the judge.