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**ROYAL COURT**
**(Samedi Division)**

117.

**6th July, 1992**

**Before: The Bailiff, and**
**Jurats Coutanche and Hamon.**

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**Representation of TSB Bank Channel Islands, Limited**

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Application, pursuant to Article 125 of the Companies (Jersey) Law, 1991, for the Court to sanction scheme of arrangement.

Intervention by objecting minority shareholder.

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**Advocate A.R. Binnington for the Representor.**
**Advocate M.C. St. J. Birt for TSB Group, plc.**
**Advocate A.J. Olsen for David Frobischer Waters, Intervenor.**

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**JUDGMENT**

**THE BAILIFF:** On 4th June, 1992, TSB Bank Channel Islands, Limited, made a representation to the Court seeking its sanction to a scheme of arrangement between the company and the holders of a number of ordinary shares called "scheme shares".

That application was made under Article 125 of the Companies (Jersey) Law, 1991.

The representor company had been incorporated in Jersey under the same name with the omission of the word "Bank" on 14th July, 1986 and had changed its name to the present name in March, 1990.

The scheme shares comprise 49 per cent of the issued share capital of the representor company; TSB Group which, owns 51 per cent of the issued ordinary shares, wishes through the scheme to acquire the remaining 49 per cent. There is an insignificant number of other shares not included in the scheme.

On 4th June, 1992, after hearing counsel, the Court fixed today to receive a report from the Chairman of a meeting at which the scheme was to be put to shareholders in accordance with the requirements of the Law. That meeting was held on 1st July, 1992,

when the resolution approving the scheme was passed by a majority representing 91.3 per cent of the scheme shareholders present, voting in person or by proxy.

At that meeting Mr. D.F. Waters, FCA, questioned whether the scheme could properly be brought in under Article 125 of the Companies (Jersey) Law, 1991.

This morning, Mr. Olsen for Mr. Waters, first submitted to the Court that because this was an important matter, and because it was important that a proper decision be made, the question of whether this Court had jurisdiction under Article 125, or whether the representation ought to have been brought under a different Article, should be referred to the Attorney General.

Mr. Olsen secondly raised the point of the question of costs. He said that the reference to the Attorney General was necessary because Mr. Waters is the liquidator of a company which itself holds shares in a shareholder of the representor company; it would be wrong for Mr. Waters to incur what might be considerable costs. Therefore, because this was a matter of public interest, the matter should be referred to the Attorney General for him to argue, presumably, at public expense.

Mr. Binnington for the representor company and Mr. Birt for the TSB Group, cited authorities in support of the application. They pointed out, quite properly, that our Article 125 is in identical terms with the English Acts. Our Law is copied - I think it is not unfair to describe it as such - from section 206(1) of the Companies Act 1948, as re-enacted with a minor omission in section 425 of the Companies Act 1985. The wording of our Article is as follows:

***"Power of company to compromise with creditors and members***

***(1) Where a compromise or arrangement is proposed between a company and its creditors, or a class of them, or between the company and its members, or a class of them, the court may on the application of the company or a creditor or member of it or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be called in a manner as the court directs".***

As I have said, the Court has already made that order and the meeting has been held.

After Mr. Binnington and Mr. Birt had presented their arguments to the Court that the representation fell fully within the provisions of Article 125, Mr. Waters said that he would abide by the decision of the Court on this particular point, but would

wish to be heard on the merits of the application itself if the Court ruled that it was properly receivable.

As I have said the wording of our Article is in identical terms with those of the English Acts. Far from it being a cause for alarm (as Mr. Olsen suggested) that we should rule in the manner suggested, it would we think, be a cause for some surprise if, with identical provisions in our Law, we did not have the fullest regard to the very strong persuasive effects of interpretation given by the English Courts to their Articles. Indeed, not only by the English Courts, but also by the Scottish Courts, as the two Acts - the Companies Act of 1948, and the Companies Act of 1985 applied and apply both in England and in Scotland.

That being so, we had to look at the cases in point and there were two. Strangely enough the English case of Re Savoy Hotel (1981) 3 All ER 646, was, according to the report of the Chairman of the meeting, the very case on which Mr. Waters relied for the proposition put to the meeting that the representation could not be brought under our Article 125. However, on reading that case and the Judgment of Nourse J, it is clear to us that that case supports the proposition of Mr. Binnington and Mr. Birt that a scheme of this arrangement falls quite fully and properly within our Article 125.

I read from the headnote to that case:

> ***"The word 'arrangement' in s 206 of the 1948 Act was to be interpreted widely, and, since the scheme would affect the contractual relationship subsisting between the company and its members by requiring the company to register the applicant in place of existing members as the holders of the company's shares, the rights and obligations between the company and its members were sufficiently affected for the proposed scheme to be an 'arrangement . . . between' them within s 206(1)".***

And a reference is made in the headnote to the passage of Nourse J which I will now read at p.652 beginning at letter "e":

> ***"I now consider the first argument of counsel for the "Savoy". He accepts that the proposed scheme constitutes an arrangement, but he says that it is not one 'between' the "Savoy" and its members or any class of them. Although this does not seem to have been the view universally held during the period immediately following the enactment of s 38 of the 1907 Act (see, for example, Re Guardian Assurance Co [1917] 1 Ch 431 per Younger J), there can be no doubt that the word 'arrangement' in s 206 has for many years been treated as being one of very wide import. Statements to that effect can be found in the judgments of Plowman J in Re National Bank***

***Ltd [1966] 1 All ER 1006 at 1012, [1966] 1 WLR 819 at 829, and of Megarry J in Re Calgary and Edmonton Land Co Ltd [1975] 1 All ER 1046 at 1054, [1975] 1 WLR 355 at 363. That is indeed a proposition for which any judge who has sat in this court in recent years would not require authority, and its validity is by no means diminished by what was said by Brightman J in Re NFU Development Trust Ltd [1973] 1 All ER 135, [1972] 1 WLR 1548. All that that case shows is that there must be some element of give and take. Beyond that it is neither necessary nor desirable to attempt a definition of 'arrangement'."***

This Court is sitting for the first time to deal with a matter of this nature and is therefore in a different position from that of an English Judge who would not require authority, as Nourse J said. We have to be satisfied that we are entitled to take a wide view of an application of this nature.

We are fortified that we may do so, not only by the case of Re Savoy Hotel Ltd but by the Scottish case of The Singer Manufacturing Company -v- Robinow (1971) SC 11 and I read the headnote:

***"Sec. 206 of the Companies Act, 1948, enables a company, inter alia, to enter into an arrangement with its members or any class of them.***

***The majority of the shares of a Scottish company were held by a parent company abroad. The directors of both companies being of opinion that it would be in the interest of the group of which the two companies formed part if the whole of the Scottish company's shares were held by the parent company, a scheme of arrangement was prepared, under which the parent company was to acquire the shares not already held by it, and each of the minority shareholders was to be paid a price for his holding substantially in excess of its market value. A petition for sanction of the scheme under sec. 206 was opposed on the ground that being in essence an arrangement, not between the company and any class of its members, but between two groups of members, it did not fall within the ambit of the section.***
***Held that the scheme fell within what it is competent to achieve under sec. 206".***

And in his judgment the Lord President, Lord Clyde, said at the bottom of p.13:

***"The Courts have always interpreted section 206 and its statutory predecessors broadly, so as to enable a wide variety of different types of arrangements to be put forward,*** ...." (and he comments on the instant scheme before him).

It seems to us, looking at the background of the wish of the TSB Group to acquire these shares that this case is very similar, if not entirely on all fours with the Scottish case, and we are prepared to take the same wide view as the English and Scottish Courts. Therefore we rule that the representation is properly brought under Article 125 of our Law.

## Authorities

The Companies (Jersey) Law, 1991: Articles 116-126.

The Companies Act, 1948: s 206-209.

The Companies Act 1985 s 425-430.

Palmers Company Law: 12.001-12.031.

The Singer Manufacturing Company -v- Robinow (1971) SC 11.

Re Savoy Hotel Ltd (1981) 3 All ER 646.

In Re English Scottish and Australian Chartered Bank (1893) 3 Ch. 385.

Re MB Group plc (1989) BCLC 672.

In Re National Bank Ltd (1966) 1 WLR 819.

In Re Hellenic and General Trust Ltd (1976) 1 WLR 12

In Re Alabama, New Orleans, Texas and Pacific Junction Railway Company (1891) 1 Ch. 213.

In Re Empire Mining Co (1890) 44 Ch. 402.

In Re London Chartered Bank of Australia (1893) 3 Ch. 540.

Re Guardian Assurance Co (1917) 1 Ch. 431.