

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
(COMMERCIAL DIVISION)**

CLAIM No: BVIHC (COM) 2022/0008

**IN THE MATTER OF RONGXINDA DEVELOPMENT (BVI) LTD
AND IN THE MATTER OF SECTION 179A OF THE BVI BUSINESS COMPANIES ACT
2004 (AS AMENDED
AND IN THE MATTER OF A SCHEME OF ARRANGEMENT**

BETWEEN:

RONGXINDA DEVELOPMENT (BVI) LTD

Applicant

Appearances:

Mr. Peter Ferrer, Ms. Marcia McFarlane and Mr. Chai Ridgers of Harneys for the
Applicant

2022 February 8 (Argument; Oral Judgment)
April 13 (Written Judgment)

JUDGMENT (No 1)

[1] **JACK, J [Ag]:** In this matter, I am asked to make orders in respect of a Scheme of Arrangement under section 179A of the **BVI Business Companies Act 2004**¹ which is being proposed in respect of Rongxingda Development (BVI) Limited. Section 179A provides so far as material:

“(1) Where a compromise or arrangement is proposed between a company and its creditors or, any class of them, or between the company and its members or any class of them, the Court may, on the application of a person specified in subsection

¹ No 16 of 2004, Laws of the Virgin Islands.

(2) order a meeting of the creditors or class of creditors or of the members or class of members as the case may be, be summoned in such manner as the Court directs.

(2) An application under subsection (1) may be made by, (a) the company...

(3) If a majority in number representing seventy five percent in value of the creditors or class of creditors or members or class of members as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement if sanctioned by the Court is binding on all the creditors, or the class of creditors or the members or class of members as the case may be, and also on the company, or in the case of a company in voluntary liquidation, or in liquidation under the Insolvency Act, on the liquidator and on every person liable to contribute to the assets of the company in the event of its liquidation."

[2] I do not need to read the rest of the Section. It can be seen that there is a two-stage process. The first stage is for me to order that there be a meeting. And secondly, if the meeting reaches the necessary seventy-five percent by value of creditors, I then have to consider the question of sanctioning the proposal.

[3] As Mr. Ferrer conveniently sets out at para 1.5 of his skeleton argument, there are five matters to be considered when the Court is determining whether a Scheme Meeting should be convened.

- (a) The Court's jurisdiction to make an order that the company be at liberty to convene the meeting, the Scheme Meeting under section 179A and directions for the further conduct of the matter;
- (b) Whether the Scheme has a reasonable prospect of success;
- (c) The classes and scheme creditors proposed by the company;
- (d) The notice of timing and conduct of the Scheme Meeting; and
- (e) the documentation to be approved at the Scheme meeting.

[4] The background of this matter is the difficulties (which are well-known) in the real estate market in the People's Republic of China. Rongxingda Development (BVI) Limited is a wholly-owned subsidiary of Risesun Real Estate Development Co Ltd. That is a PRC

company which has extensive real estate interests and development interests in the People's Republic.

- [5] Rongxingda's purpose was to raise finance, and there are effectively two tranches of debt which are in question in the current proceedings. First of all, there are around US\$300 million of borrowings which came due in January of this year. There was a default in respect of that and the monies have not been repaid. There is another tranche of some US\$500 million which is due in April of this year. Again, there is little to no prospect of that being paid in accordance with its terms. The loans are governed by New York law and the notes themselves are floated on the Singapore Stock Exchange on the security trading part of that exchange.
- [6] The proposals I do not need to set out. As is usual, they involve swapping the current liabilities for other liabilities with receipt of some money in cash by the creditors. There are currently 75.77 percent by value of creditors who support the proposal.
- [7] In those circumstances, the Scheme clearly has a reasonable prospect of success. I need to consider the classes of Scheme Creditor proposed by the company. The company say there is only one class of creditor. I agree. The two different Noteholders have substantially the same rights, they are both unsecured, and there is no reason to differentiate between the two.
- [8] It is right to say that there has been a fee paid by the company to those who are supporting the proposal. That is a fee of one and a half percent of the value of the relevant Notes. There is good authority though, that a small fee of that type does not mean that the creditors who have accepted the one and a half percent fall into a different class of creditor from those who have not. And there is English authority which suggests that a fee of as much as two and a half percent does not have the effect of making the creditors into different classes.

[9] The test was set out as long ago as 1892 in **Sovereign Life Assurance Company v Dodd**,² where Bowen LJ said that:

“The rights of those included in that single class can be subject to material differences provided that they are not so dissimilar as to make it impossible for them to consult together with a view to their common interests.”

[10] In the current case, I am satisfied that all of the creditors fall into one class and that there is no need to have separate classes of member. In terms of the mechanics of the Scheme Meeting, what is proposed is that there be a meeting at Harneys’ offices in this Territory, and that that be simulcast to Harneys’ offices in Hong Kong, and that anybody who wishes to participate in the meeting is able to do so virtually.

[11] It is right to say that the 2004 Act does not contain a definition of meeting, but I am quite satisfied that a meeting held in that way does constitute a meeting for the purpose of the Act. In those circumstances there is no need to make arrangements other than those which are being proposed by the Applicant.

[12] Again, the documentation to be approved seems to be uncontroversial. In those circumstances, I will grant the Order.

Adrian Jack

Commercial Court Judge [Ag.]

By the Court

Registrar

² [1892] 2 QB 573 at p 583.