

In NYX Gaming Group Limited

February 2018

The Royal Court of Guernsey has confirmed the requirements for it to sanction a scheme of arrangement in the recent decision, in NYX Gaming Group Limited (**the company**).

Background

The proposed arrangement was to allow the company to be purchased by Bally Gaming and Systems UK Limited (**the scheme**). At a hearing in November 2017, the Court ordered that a meeting of the company's members should be held to consider the scheme.

At the meeting the members of the company present and entitled to vote, voted almost unanimously in favour of the scheme.

Legal Test

The Court noted that it should be slow to differ from the view of the members when there had been such a general expression of support for the scheme.

However, before sanctioning a scheme of arrangement, the Court must be satisfied of the following:

1. That the relevant provisions of the *Companies (Guernsey) Law 2008* have been complied with;
2. That, in relation to the relevant class of shareholders, the meeting was fairly represented by those attending and the majority acted bona fide and had not coerced the minority in order to promote interests adverse to those of the class they purported to represent. In this particular case, while those members who exercised their right to vote did so almost unanimously in favour of the scheme, those members themselves represented just over three quarters of all members who were actually eligible to vote;
3. That an intelligent and honest person, being a member of the class concerned and acting in support of his own interest, might reasonably approve the scheme; and
4. There must be no blot on the scheme. In respect of this element of the test the Court noted that this fell within the remit of the Court's discretion, which should be exercised judicially and it was never to be just a rubber stamp.

The Court was satisfied that the above elements of the test had been met and sanctioned the scheme.

Conclusion

Presumably, in making the application for sanction of the scheme, the company put into practice the Court of Appeal's guidance in its 2017 decision in *Re Puma Brandenburg Limited*, namely that care should be taken to ensure that a fair and accurate presentation of such a scheme is made to both those to be bound by the scheme and to the Court.

The importance of timely notices, comprehensive explanatory documents and shareholder engagement cannot be overstated in ensuring a smooth approval process.

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