

## **First plan of arrangement completed in the BVI**

Jacqueline Daley Aspinall and Keisha M Durham recently advised on and effected the first plan of arrangement completed under the BVI Business Companies Act ("BVIBCA") in accordance with section 177. The primary purpose of this arrangement was to effect a going public transaction for BVI Company A by way of reverse take over with BVI Company B. BVI Company A is a mineral exploration and development company focused on acquiring, exploring and developing potash and phosphate deposits in Brazil with operations and investors in Canada and the US.

Section 177 of the BVIBCA provides that a plan of arrangement may be utilised to affect any one or more of the following corporate actions:

- an amendment to the memorandum or articles of association;
- a reorganisation or reconstruction of a company;
- a merger or consolidation of one or more companies that are registered under the BVIBCA with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;
- the separation of two or more businesses carried on by a company;
- any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that other person, or money or other assets; or a combination thereof;
- the sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company;
- the dissolution of a company; and
- any combination of the things specified above.

Proceedings were commenced pursuant to section 177 of the BVIBCA and there were a number of hearings before the Court at the end of which the Court approved the proposed arrangement. The BVIBCA provides for an application being made by the company and for there to be a formal hearing or hearings at which the court may make an interim or final order giving directions. The directions given by the Court may require that certain approvals be obtained (typically shareholder approval) and it may also require that certain notices be given or advertisements be made, typically for the benefit of members and other interested parties such as creditors. Assuming that an interim order was granted, there would be a further and/or final hearing at which interested parties may appear and be heard. At the hearing,

the court would exercise its discretion either to reject or approve the plan of arrangement with or without amendments.

Once the order is granted by the Court for the approval of the plan of arrangement the directors, if they wish to execute the plan, must confirm the same and take the steps necessary in accordance with the court's interim or final order.

Provided that the court approves the plan of arrangement, there will be a final step, in which articles of arrangement (which attach the plan of arrangement) must be executed by the BVI company and submitted to the BVI Registrar of Corporate Affairs. Upon registration of the articles of arrangement, the Registrar will issue a certificate of arrangement certifying the arrangement has been effected.

The overall timeframe for effecting an arrangement varies based on the steps required by virtue of the directions given by the Court at the initial hearing. The nature of the given transaction together with the need to ensure that steps are synchronised with requirements of foreign law tend to factor into the time-line and in most instances serve to lengthen the process. In any event it is comforting to bear in mind that given the speed and efficiency of the BVI Courts and Registries which are involved in the process, court hearings are usually scheduled within a few weeks of filing. In some instances where a particular urgency can be demonstrated it may even be possible subject to the availability of the Court to have a hearing within a few days of filing.

The plan of arrangement will only be effective when the articles of arrangement are filed with the BVI Registrar of Corporate Affairs. The effective date of the arrangement may either be the date of the filing or such later date, not exceeding 30 days after the filing date, as stipulated in the articles of arrangement.

It is critical to obtain an order of the Court approving a plan of arrangement in order for it to be executed. In our particular case the transaction itself and proposed arrangement were fairly complex and there were a number of hearings and steps to be taken based on the Court's directions. Accordingly the entire process, including that of the registration of the articles of arrangement took a total of four months. Once again this was a peculiar case and it is expected that in a more straightforward matter where fewer directions of the Court are needed the time frame should be shorter. As with all matters this would vary on a case by case basis.

Given our recent involvement in advising on and effecting the first plan of arrangement under the BVIBCA, it has certainly become evident that this option can be usefully employed in a number of scenarios for the benefit and increased profitability of BVI companies and ultimately their shareholders.

## Further Information

*The foregoing is for general information purposes only and not intended to be relied upon for legal advice in any specific or individual situation.*

*For more information on the subject please contact Jacqueline Daley-Aspinall ([jacqueline.daley@harneys.com](mailto:jacqueline.daley@harneys.com)), Keisha Durham ([keisha.durham@harneys.com](mailto:keisha.durham@harneys.com)) or your usual Harneys contact.*

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