In The Supreme Court of Bermuda
CIVIL JURISDICTION

COMMERCIAL COURT
2025 No 233

IN THE MATTER OF OCEANS WILSONS HOLDINGS LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 1981

Application for the sanction of a scheme of arrangement under section 99 (2) of the Companies Act 1981; opposition to sanction on grounds of incorrect class division; opposition to sanction on grounds of unfairness as to valuation and exchange ratio.

Dates of Hearing: 30 October 2025 and 3 November 2025
Date of Decision: 2 December 2025

Appearances;

Michael Todd KC of Erskine Chambers and *Kyle Masters* of Carey Olsen Bermuda Limited for Oceans Wilsons Holdings Limited

George Bompas KC of 4 Stone Buildings and *Kevin Taylor* of Walkers Bermuda Limited for Arnhold LLC

Rhys Williams of Conyers Dill & Pearman Limited for Hansa Investment Company Limited

DECISION AND ORDER

MARTIN J

Introduction

1. This is the court's decision and ruling in relation to an application for the sanction of a scheme of arrangement under section 99 (2) of the Bermuda Companies Act 1981 ("the Scheme").

2. The Scheme has been promoted between Oceans Wilsons Holdings Limited ("OWHL") and a class of its members ("the Scheme Shareholders"). It is described in the Scheme documents as an

"*all share combination*" by which the shares of OWHL will be exchanged for Share Units in Hansa Investment Company Limited ("Hansa"). The result of this exchange will be that Hansa will become the owner of all of the ordinary shares of OWHL and OWHL will become a subsidiary of Hansa and the Scheme Shareholders will become shareholders in Hansa instead of OWHL.

3. The Scheme applies to all the ordinary voting shares of OWHL which are not owned by Hansa Investment Company Limited ("Hansa") ("the Scheme Shares"). Hansa already owns 9,352,770 ordinary shares in OWHL which represents about 33% of issued voting share capital of OWHL, and Hansa's current holding is defined in the Scheme as "the Excluded Shares."

4. In exchange for the transfer of each one of their ordinary shares in OWHL to Hansa, the Scheme Shareholders are to receive 1.4925 Share Units comprising one voting New Hansa Ordinary Share and two non-voting New Hansa Ordinary 'A' Shares in Hansa. This is referred to as "the Exchange Ratio" and represents the "give and take" of the Scheme.

5. On 13 August 2025 the court made an order convening the Scheme Meeting at which Scheme Shareholders were to consider and if thought fit to approve the Scheme. The order convening the Scheme Meeting directed that there was to be one class of Scheme Shareholders.

6. In order to be approved at the meeting, the Scheme Shareholders had to vote in favour of the Scheme by a majority of Scheme Shareholders who were present in person or by proxy at the meeting and who represent three quarters[1] in value of the votes cast.

7. The Scheme Meeting was duly held at OWHL's registered office in Bermuda on 12 September 2025 at 9.00 am local time. The Chair of the meeting reported that the vote was conducted by way of a poll. In summary, votes in favour of approving the Scheme were cast by 59 Scheme Shareholders who were present in person or by proxy; and votes were cast against approving the Scheme by 18 Scheme Shareholders who were present in person or by proxy. Of the votes cast, the Chair recorded that 93.29% of the holders of the Scheme Shares voted, of which 76.62% voted in favour of the Scheme and 23.38% voted against the Scheme. The Chair therefore reported to the court that the Scheme was approved by the necessary statutory majority[2].

8. OWHL is listed on the London Stock Exchange ("the LSE") and the Bermuda Stock Exchange ("the BSX"). It is relevant to explain that the overwhelming number of Scheme Shares are not held personally by investors in certificated form but are held on their behalf by a licensed depository called MUFG Corporate Markets ("MUFG") which is registered as the holder of the aggregate of all the shares held in its name on behalf of its clients.

9. The Scheme Shares held by MUFG are not in certificated form and are therefore referred to as being "de-materialised". Investors were given the opportunity to give instructions to MUFG as to how they wanted to vote on the Scheme, and MUFG carried out its calculation of instructions to vote in favour or against the Scheme internally before casting its vote at the Scheme Meeting. The vote of MUFG was directed to count as one vote in terms of number either for or against the

[1] These are the minimum requirements under section 99 of the Companies Act 1981. This is referred to as "the statutory majority" in this judgment.
[2] F Beck 1 at HB1 241-2 and Exhibit FEB1at HB1 325-9.

Scheme, and the value attributed to the vote reflected the holdings of all those investors who gave instructions to MUFG to vote either in favour or against the Scheme. The majority of those instructions in favour or against the Scheme determined whether MUFG voted either for or against the Scheme on behalf of all its clients taken as a whole.

10. This approach was approved by the court at the convening hearing based upon the experience of the English courts in other cases and was guided in particular by the judicial approval given to this method by Snowden J (as he then was) in **GW Pharmaceuticals PLC**[3].

11. There were also some Scheme Shareholders whose shares were held in materialised or certificated form and these votes were tallied in the conventional way. The combined results are reflected in the figures reported to the court and summarised above. As a consequence of the meeting results recorded by the Chair, OWHL returned to court on 22 September 2025 to seek the sanction of the Scheme under section 99 (2) of the Companies Act 1981 so that it could then be registered and become effective and binding on all Scheme Shareholders, whether they voted for the Scheme or not.

12. Arnhold LLC ("Arnhold") is an investment management company which offers investment advisory services. Arnhold holds 901,846 Scheme Shares in OWHL on behalf of a number of its clients. Arnhold had raised objections to the Scheme on behalf of its own clients in correspondence with OWHL when the Scheme was announced and subsequently appeared at the sanction hearing seeking an adjournment in order to have an opportunity to oppose the Scheme. Arnhold has raised a number of subsidiary points which will be considered below, but the two essential themes of Arnhold's objections are (in summary):

    (i) The Scheme Shareholders ought to have been divided into two classes by reason of the related commercial interests that certain of the Scheme Shareholders have with Hansa and Hansa's affiliated companies[4], such that those Scheme Shareholders who have those different commercial interests could not vote with a common interest with the rest of the Scheme Shareholders. Arnhold says the Scheme would have failed to reach the necessary majorities for approval had the class boundaries been drawn in accordance with the different interests the Scheme Shareholders have.

    (ii) The commercial terms of the Scheme are unfair because the Exchange Ratio was calculated on the basis of the value of the relative notional contributions of OWHL and Hansa to the combined group valued on an adjusted net asset value calculation (a Formula Asset Value or "FAV") which has the effect of undervaluing the market or fair value of the shares in OWHL, with the result that Scheme Shareholders are unfairly penalised. Arnhold say that Scheme Shareholders should either get an alternative cash value option close to market value or more Hansa shares to compensate for the real share value they will lose on the exchange. Arnhold say that those Scheme Shareholders who have different commercial interests gain by the transaction in a way that

[3] [2021] EWHC 716 Ch.
[4] Arnhold refers to these shareholders as "Connected Shareholders" or "Connected Parties". For reasons that are explained below, the court does not adopt that terminology.

the others do not because the value of their cross shareholdings in Hansa increases as a result of the Scheme.

13. The court adjourned the sanction hearing to 30 October 2025 so that evidence could be served in support of and in answer to the objections, and in particular so that expert evidence could be led and cross examination to be undertaken at the sanction hearing as to the valuation methodology adopted in arriving at the Exchange Ratio.

14. At the adjourned sanction hearing on 30 October 2025 the court heard evidence from the valuation experts called as witnesses and each side had the opportunity to cross examine the experts on their reports. This evidence will be examined in more detail below. The essential difference between the experts was that while they both agreed that the FAV method of valuation was a reasonable method for valuation of the contributions made by each party to a combination of two investment businesses, Arnhold's expert witness did not agree that this was the appropriate method to apply in this case. This was (in essence) because the market price of Hansa's shares (as the acquiring party) was trading at a 40% discount to its net asset value per share, while OWHL's market price per share trades at a 30% discount to net asset value per share (on the day before the proposed merger announcement)[5], and the Exchange Ratio based on FAV does not capture the differences in market value of the shares. Arnhold's expert therefore preferred a calculation that was more closely aligned to share prices or market values which would more fairly reflect the value of the shares being exchanged.

Summary and Disposition

15. After careful consideration of the objections raised by Arnhold, the court has decided that it will nonetheless grant its sanction to the Scheme for the following reasons:

    (i) On the 'separate classes' issue, the court's principal concern is in relation to the treatment of the legal rights of the shareholders in their capacity as Scheme Shareholders, and not the extraneous commercial interests of the shareholders as investors, which are likely to be extremely varied and 'unknowable'.

    In this case, the existing rights of all of the Scheme Shareholders as holders of ordinary shares in OWHL are exactly the same. The rights attaching to all the Share Units in Hansa that the Scheme Shareholders will receive in exchange for their ordinary shares in OWHL are also exactly the same. Applying the conventional "rights in/rights out" approach that was recently approved by the Privy Council in **Cable & Wireless Jamaica Ltd v Abrahams**[6], there is no basis upon which to distinguish between the holders of the Scheme Shares in this case. It is not possible for the court to make distinctions between the 'infinite variety' of extraneous commercial interests that shareholders may have for the purposes of drawing class boundaries in a scheme of arrangement.

[5] Martin Drummond expert report: HB3/236 and 251-2 paragraphs 2.1.3 and 5.2.7-8 and transcript page 51.
[6] [2025] UKPC 44 at [29] to [41] per Lords Richards and Doherty especially at [37].

In this case some Scheme Shareholders also hold shares in Hansa and some derive salary and bonuses and other profits by way of dividends from the investment management services that Hansa provides to Ocean Wilsons Investment Limited and will derive those benefits from a greater pool of assets after the Scheme becomes effective. These are matters that are independent from and do not arise from the rights attaching to either the shares being given up or those being received in exchange. They are therefore 'extraneous' to the rights attaching to or arising from the shares. Accordingly, these matters are not in law relevant factors in determining whether the rights of those shareholders as shareholders in OWHL are materially different from the rights of any other Scheme Shareholder: they are not.

Therefore, the court has concluded that the decision to convene the class meeting as a meeting of a single class of Scheme Shareholders was in law correct. This has the consequence that the affirmative votes recorded in favour of the Scheme met the statutory requirements for approval by the Scheme Shareholders.

(ii) On the 'fairness' issue, the Court has concluded that the terms of the Scheme are fair and reasonable such that and intelligent and honest man who is a member of the class of Scheme Shareholders, acting alone in respect of his interest as a member of that class, might approve of it.

In respect of the fairness of the Exchange Ratio, the Court is not required to withhold its sanction if there is or may be a better proposal that could have been made, or if the Court might not have voted in favour of it. The Scheme must be fair in its treatment of all the members of the class affected; it must be fair as to the process by which the approval of the Scheme was sought and obtained; and the terms of the Scheme must be within the wide range of terms that an honest and intelligent person might consider reasonable.

In this case, the court is satisfied that the terms of the exchange in the Scheme are such that an honest and intelligent member of the class, considering it from the perspective of the class as a whole, but acting in his or her own interest, might reasonably approve those terms[7]. In the absence of any vitiating factor, the Court will not second guess the exercise of the commercial judgment of the statutory majority (both as to number and value) that have approved the Scheme.

The fact that different approaches might be taken to the question of the calculation of the Exchange Ratio does not mean that the Court should refuse its sanction because one approach might be better than another in some respects, depending on the view that an investor may take about whether their interests lay in realising their shares on the market in the near term, or perhaps taking the view that the better investment strategy is to look for the

[7] See **Re Alabama, New Orleans, Texas & Pacific Railway Company** (infra).

potential opportunity for dividend performance and capital appreciation in the long term.

On the application to sanction a scheme of arrangement, the Court is not engaged in making an appraisal of the fair value of the shares which are the subject of the exchange (i.e. the fair value of the OWHL shares compared to the fair value of the Hansa Share Units). The Court is simply concerned to ascertain that the terms of the Scheme overall are fair such that they could reasonably be approved by honest and intelligent people.

The Scheme has been proposed on the terms of the Exchange Ratio that is supported by rational valuation principles and has been recommended by the independent committee of the board of OWHL. There is no evidence that the recommendation was made otherwise than in good faith and in the genuine and honest belief that it is appropriate and in the interests of the Scheme Shareholders as a whole.

There is no evidence that the votes cast in favour of the adoption of the Scheme on the part of those shareholders who hold cross shareholdings in Hansa did so for the purpose of promoting the interests of Hansa to the detriment of the interests of the Scheme Shareholders. Nor is there any evidence that the votes in favour of the Scheme by those shareholders who earn salary, bonus or dividends (directly or indirectly) from the Hansa group of companies were cast for the purpose of promoting those interests above the interests of the other Scheme Shareholders in OWHL.

There is no evidence that the Scheme Shareholders who voted for the Scheme acted otherwise than *bona fide* in the interests of the class as a whole, nor is there any evidence that the majority who voted in favour of the Scheme exercised any coercion or other improper means to secure the affirmative vote of the Scheme Shareholders.

(iii) On the question of a 'blot' on the Scheme, the Court does not consider that the difference in opinion between the experts as to the valuation method used to arrive at the Exchange Ratio constitutes a 'blot' on the Scheme. The Scheme will be effective according to its terms and there is nothing unlawful or repugnant that would justify the court withholding its sanction.

16. A number of other ancillary points were taken by Arnhold in argument, and these will also be addressed in more detail below. In summary, the Court is satisfied that there is no justification for the Court to withhold its sanction to the Scheme based on suggested inferences of oppression or coercion or any other improper conduct by OWHL in conducting the scheme process in this case.

Background

OWHL

17. OWHL was incorporated in Bermuda by private Act of the legislature in 1991, which was amended in 1992, as a private limited liability exempted company with issued voting share capital of 28,290,432 ordinary shares at a par value of 0.20p each and fully paid with a total value of 5,658,086.40. At the time the Scheme of Arrangement was proposed there were 27,040,777 depositary interests relating to OWHL's issued ordinary shares registered in MUFG's name as a licensed depository on behalf of investors in uncertificated or dematerialised form and 1,249,655 ordinary shares registered in the names of investors and held directly in certificated form[8].

18. OWHL is a holding company which owns two principal subsidiaries which are also holding vehicles: (i) a subsidiary called Oceans Wilsons Investment Limited ("OWIL") which holds an investment portfolio of diverse holdings which are managed by Hanseatic Asset Management LBG ("HAML") and (ii) a subsidiary called Oceans Wilsons Overseas Limited which owns OW Overseas (Investments) Ltd which in turn (until June 2025) owned 56.47% of Wilson Sons SA[9]. Wilson Sons SA operates a very large integrated container terminals and ports and maritime logistics business as well as naval construction shipyards in Brazil. OWHL sold its underlying investment in Wilson Sons SA in June 2025 for US$594 million (net)[10].

Hansa

19. Hansa is also listed on the main market of the LSE as a close-ended investment fund with no fixed life. Its present share capital consists of 40 million Ordinary Shares and 80 million non-voting 'A' Ordinary Shares. Hansa's business operates as a diversified investment fund and investment management business.

20. Mr Jonathan Davie is the chair of Hansa's board. Mr. Davie and his immediate family have direct interests in 17,500 OWHL ordinary shares representing 0.06% of OWHL's capital and 50,085 Hansa Ordinary Shares and 230,000 Hansa 'A' Ordinary Shares, representing 0.13% of Hansa's issued voting capital and 0.29% of Hansa's issued non-voting capital.

21. Hansa has a long-standing substantial investment in OWHL and currently holds 33% of OWHL's issued ordinary voting shares[11].

The Tender Offer

22. Following the sale of its interest in Wilson Sons SA, on 17 June 2025 the board of OWHL decided to return a proportion of the net cash proceeds to investors by way of a Tender Offer by

[8] HB1/9-10 C Foulger 1 paragraphs 13-19.
[9] The group structure is set out in the 2024 Annual Report exhibited to C Foulger 1 at page 290.
[10] HB2/61 and HB1/331.
[11] HB1/19 C Foulger 1 paragraph 66.

which it offered to repurchase 20% of its ordinary shares[12]. The Tender Offer was oversubscribed and resulted in 109,000,000 being returned to tendering shareholders[13].

The all-share combination

23. On the same date, OWHL and Hansa announced that they had reached a preliminary agreement on the terms of an 'all-share combination' of OWHL and Hansa by which Hansa would acquire the entire issued share capital of OWHL by means of a scheme of arrangement promoted under section 99 of the Bermuda Companies Act 1981 ("the Scheme"). On 28 July 2025 Hansa and OWHL jointly announced that they had agreed the terms of the proposed all-share combination, pursuant to which Hansa would acquire all the issued (and to be issued) share capital of OWHL by means of the Scheme.

24. For the purposes of considering the combination and the Scheme, OWHL's board established an independent committee of the board to negotiate the terms of the proposed exchange of shares by which the combination would be achieved. This independent committee excluded Mr William Salomon ("Mr. Salomon") and Mr Christopher Townsend ("Mr. Townsend") because each of them had disqualifying financial interests in Hansa, Mr. Salomon is a director of both Hansa and OWHL, and Mr. Townsend is a director of OWHL[14].

25. The independent committee of the board of OWHL negotiated the terms of the all-share combination and recommended acceptance of an agreement with Hansa that Hansa would acquire all of the shares in OWHL that were not already owned by Hansa in an exchange according to the following ratio: in return for the exchange of each ordinary share in OWHL the OWHL shareholders would receive 1.4925 New Hansa Share Units in Hansa. Each New Hansa Share Unit comprises one voting New Hansa Ordinary Share and two non-voting New Hansa 'A' Ordinary Shares[15].

26. It was agreed that the exchange would be achieved by means of a Scheme of Arrangement between the company (OWHL) and a class of its members (all the members except for Hansa) The effective result of the implementation of the Scheme (if sanctioned) will be that OWHL will become the wholly-owned subsidiary of Hansa and the former OWHL shareholders will own Share Units in Hansa.

27. The independent committees of the boards of both OWHL and Hansa (each separately and independently advised by their own financial advisors) concluded that the financial terms of the combination (i.e. the Exchange Ratio) were fair and reasonable and each committee unanimously recommended approval (a) in the case of OWHL, that the scheme shareholders approve the Scheme and (b) in the case of Hansa, that answer shareholders vote in favour of the Hansa Resolutions (as defined[16]) which are necessary to complete the share exchange.

[12] HB1/10 C Foulger 1.
[13]Neither Hansa, Victualia Limited nor Mr. Townsend tendered any OWHL shares in accordance with undertakings given in relation to the Tender Offer. These relationships are described in more detail below.
[14] HB1/10-11 C Foulger 1 paragraphs 20-25.
[15] HB1/265-6
[16] These are the ordinary resolutions by Hansa's shareholders to approve, effect and implement the combination (defined at C Foulger 1 page 162)

28. The principal advantages of the Scheme were described in the Chair's letter to Scheme Shareholders and the Scheme documents[17]. These included that (i) the combination of the two complementary investment portfolios under a simplified group structure (ii) the creation of a differentiated investment company of meaningful scale with total assets of over £900 million which would result in a diversified global portfolio of investment funds, direct equities and private assets which would result in a strong platform for long term value creation. In addition, the combination would include a lower, blended management fee structure and lower ongoing charges ratio.

29. The independent board committee of OWHL considered that the benefits of scale provided by the combination is in the best interests of OWHL and its shareholders and recommended that the Scheme Shareholders vote in favour of the Scheme[18].

Declarations of interests by certain shareholders

30. The various interests that Mr. Salomon and Mr. Townsend hold (directly or indirectly) in Hansa and OWHL need to be explained in detail because Arnhold took a number of points in support of their submission that the Scheme Shareholders ought to have been divided into two classes on account of the different interests Messrs. Salomon and Townsend have as distinct from the rest of the Scheme Shareholders.

31. Mr. Salomon is a director of both OWHL and Hansa but does not take part in any decisions of Hansa's board in relation to Hansa' investment in OWHL. Mr Salomon (and his immediate family) are directly interested in 8,22,220 Hansa Ordinary Shares and 3,587,123 Hansa 'A' Ordinary shares representing 2.06% of Hansa's issued voting share capital and 4.08% of Hansa's issued non-voting share capital respectively. Mr. Salomon is not directly interested in OWHL's ordinary shares, but his immediate family are interested in 224,285 OWHL ordinary shares or 0.79% of the issued share capital of OWHL[19].

32. Mr. Salomon and certain members of his family are the limited partners of Victualia Limited ("Victualia") which is a limited partnership that is managed by its general partner Ansgar Limited ("Ansgar"). The board of Ansgar are independent of Mr. Salomon and his family. Victualia holds 4,435,064 OWHL ordinary shares representing 15.68% of OWHL's ordinary shares and 10,347,125 Hansa Ordinary Shares, representing 25.87% of Hansa' issued voting share capital. Based on the Exchange Ratio proposed in the Scheme, Mr. Salomon, his family and Victualia will be interested directly or indirectly in 18,123,423 Hansa Ordinary Shares and 17,495,279 Hansa 'A' Ordinary Shares which (if the Scheme is sanctioned) will represent 26.55% of the issued voting share capital of the combined group and 12.81% of the issued non-voting share capital of the combined group[20].

33. Mr. Townsend is Mr. Salomon's nephew, and he is a director of OWHL. Mr. Townsend holds 4,040,000 OWHL ordinary shares representing 14.28% of OWHL's issued share capital. Mr. Townsend also owns 1,752,500 Hansa A Ordinary Shares representing 2.19% of Hansa's issued

[17] HB1/268-9
[18] HB1/272
[19] HB1/19 C Foulger 1 paragraphs 67-8
[20] HB1/ 20 C Foulger 1 paragraphs 70-72

non-voting share capital. Through an investment vehicle called Nomolas Limited ("Nomolas"), Mr. Townsend is indirectly interested in 10,347,125 Hansa Ordinary Shares and 952,875 Hansa 'A' Ordinary Shares representing 25.87% of Hansa's issued voting shares and 3.38% of Hansa's issued non-voting share capital. Based on the Exchange Ratio proposed in the Scheme, Mr. Townsend will be directly and indirectly interested in 16,376,825 Hansa Ordinary Shares and 14,764,755 Hansa 'A' Ordinary Shares, which (if the Scheme is sanctioned) will represent 50.54% of the issued voting share capital of the combined group and 10.81% of the issued non-voting share capital of the combined group[21].

34. Based on the independent advice taken by the independent committee of the boards of OWHL and Hansa respectively, neither company considers that Mr. Salomon (and his family) and Victualia or Mr. Townsend (and his family) and Nomolas are acting 'in concert' with Hansa (within the meaning of the UK Takeover Code) in connection with the Scheme. Similarly, based on independent advice taken by the independent committee of the board of Hansa, Hansa does not consider that Mr. Salomon (and his family) or Victualia are acting 'in concert' with Mr. Townsend and Nomolas in relation to Hansa or, on implementation of the Scheme, the combined group of companies[22]. None of this was challenged by Arnhold.

35. In relation to the arrangements for the investment management of OWHL and Hansa, Hanseatic Asset Management LBG ("HAML") acts as investment manager to OWHL and receives an annual investment management fee of 1% of the value of the investment assets and cash held by OWIL (a wholly-owned subsidiary of OWHL) and earns a performance fee based on a formula which is capped at 2% of OWIL's net asset value. Mr. Salomon is the chair and Mr. Townsend is a director of HAML and each receives salary and bonus compensation from HAML. There are three other directors of HAML apart from Messrs. Salomon and Townsend.

36. HAML also holds 520,331 Hansa 'A' Ordinary Shares representing 0.65% of Hansa's issued non-voting share capital. The principal beneficiaries of HAML are persons who are family members or are connected to the Salomon family (and other charitable or philanthropic causes). HAML receives investment advice from Hansa Capital Partners in which HAML is also a member along with Mr. Salomon and two others. Mr. Salomon receives a share of Hansa Capital Partners' profits. HAML also receives advice from a wholly owned subsidiary called Hansa Capital GmbH of which Mr. Townsend is a director. HAML acts as Hansa's delegated portfolio manager (other than in respect of Hansa's shareholding in OWHL) in respect of which Hansa pays an annual investment management fee of 1% of Hansa's net asset value (excluding the value of Hansa's holding in OWHL) to Hansa Capital Partners as well as for administrative services[23].

37. Following implementation of the Scheme, it is intended that HAML will act as alternative investment fund manager and portfolio manager for the combined group and Hansa Capital Partners will be appointed as investment manager to HAML and will provide administrative services to the combined group. It is proposed that, following the implementation of the Scheme,

[21] HB1/ 20-1 C Foulger 1 paragraphs 73-5. The record of the Townsend family holdings was later corrected to reflect that Mr. Townsend's parents own 33,000 depositary interests which were not recorded in the disclosure by accidental omission. These additional holdings do not materially affect the size of the interests held by Mr. Townsend and his family overall.
[22] HB1/21
[23] HB1/22-3

the fees charged by HAML will be reduced and will be structured on a tiered basis of 0.8% of the combined group net asset value up to £500 million and thereafter 0.7% and the additional performance fee will be eliminated. It is predicted that this will achieve a lower blended management fee rate which is comparable to standard industry rates and will result in a lower ongoing charges ratio for the combined group[24].

38. Messrs. Salomon and Townsend therefore receive a variety of commercial benefits from their respective shareholdings in OWHL and Hansa, and their direct and indirect interests in HAML and Hansa Capital Partners, as well as salaries, bonuses and dividends derived from these holdings.

Irrevocable undertakings

39. In connection with the proposed Scheme, Hansa received irrevocable undertakings and letters of intent from (i) each of the members of the independent board committee of OWHL who hold OWHL shares (ii) Mr. Townsend, Victualia, City of London Investment Management Company Limited and Unicorn Asset Management Limited representing 9,445,943 OWHL shares or 49.88% of the Scheme Shares to vote in favour of the Scheme as at 25 July 2025, being the day prior to the announcement.

40. OWHL received irrevocable undertakings and letters of intent to vote in favour of the Hansa Resolutions in respect of 21,554,520 Hansa Ordinary Shares representing 53.89% of Hansa's voting capital as at 25 July 2025, being the day prior to the announcement[25].

The convening application

41. Application was made to the court on 13 August 2025 for an order to convene the Scheme Meeting on 12 September 2025. The court was satisfied that the terms of the Scheme met the minimum criteria necessary and that the Scheme required only one class of Scheme Shareholders because the rights of each of the shareholders who were affected by the Scheme were exactly the same, and that each of those shareholders would receive rights in the new shares units they were to receive if the Scheme was approved were exactly the same[26].

42. The court was satisfied that the information memorandum contained a full description of the terms of the scheme and its effect upon the Scheme shareholders[27]. The court indicated that it would be sensible to emphasise in the document all shareholders who wished to vote in person needed to take steps to re-materialise their depositary interests into an entry on the register of the shareholders in their own name. The court then made the order convening the Scheme.

The Scheme Meeting and sanction hearing

43. The Scheme Meeting was duly held on 12 September 2025 and the results of the vote were recorded as passing the necessary voting thresholds for approval in the proportions summarised in paragraph 7 above. OWHL applied for the court's sanction and the matter was brought before

[24] HB1/23-4
[25] HB1/148-9
[26] See the court's brief reasons for granting the convening order dated 18 August 2025 HB3/373-4.
[27] HB1/274-292

the court for hearing on 22 September 2025. At that hearing Arnhold appeared by counsel and applied for an adjournment of the sanction hearing in order to mount its opposition to the grant of the sanction of the Scheme on the grounds that:

> (a) the Scheme Shareholders ought to have been divided into two classes namely (i) those Scheme Shareholders who have cross shareholdings in Hansa and who receive commercial benefits from Hansa and the Hansa group (as described above) by way of salaries, bonuses, profits and dividends and (ii) those who do not. Arnhold says that based on the results of the meeting, if the classes of the Scheme Shareholders had been so divided the Scheme would have failed to achieve the necessary majority of affirmative votes of the class that had no cross holdings or commercial benefits from Hansa; and
>
> (b) the terms of the Exchange Ratio did not produce a fair exchange of the shares when judged by the trading values of the shares on the public market, and accordingly the result of the Scheme is unfair.

44. The court granted the adjournment application[28] and gave directions for the exchange of evidence including expert evidence, the preparation of a list of issues[29] to be addressed by the experts and for a joint report to be prepared for presentation to the court at the adjourned hearing to assist with the determination of the issues. These directions were given on a tight timescale to achieve an expedited process to determine the matter having particular regard to the fact that the shares which are the subject of the Scheme are publicly traded on the LSE and the BSX.

45. The adjourned sanction hearing proceeded over two days on 30 October 2025 and 3 November 2025 (allowing for a short break due to the hurricane that passed the islands over that weekend). OWHL adduced evidence in a written report from Mr Andrew Robinson of Deloitte LLP[30] and Arnhold adduced evidence in a written report from Mr Martin Drummond of Teneo Financial Advisory Ltd[31]. Both experts are highly qualified and experienced professional valuers. They submitted a joint report summarising the points they agreed upon and those they did not[32]. They were both closely cross-examined by the other side's leading counsel at the hearing.

OWHL's position

46. It is correct that the burden of persuading the court that it is appropriate to grant the court's sanction to the Scheme lies on OWHL as the applicant. OWHL has set out the basis of the Scheme and its effect in its evidence, which is not challenged, save for the issue as to the fairness of the Exchange Ratio.

47. The issue of the class division is really a matter of law, rather than evidence, because the evidence relating to the interests that are said to give rise to the need for a division into a separate class is not in dispute (except for one point which was said not to have been disclosed in the

[28] HB3/375-6
[29] HB3/171
[30] HB3/174
[31] HB3/228
[32] HB3/294

evidence). The evidence relating to the resolutions passed at the Scheme Meeting is not in dispute.

48. OWHL's position is that on the undisputed evidence, all the technical requirements for compliance with the provisions of section 99 and 100 of the Companies Act 1981 have been met, and the Scheme has been passed by the necessary statutory majority, and therefore, in the absence of a technical "blot" on the Scheme (which is discussed below), there is no reason why the court should not sanction the Scheme in accordance with its terms.

Summary of Arnhold's opposition to the grant of the court's sanction to the Scheme

49. In opposing OWHL's application for the grant of the court's sanction to the Scheme, the court accepts that there is no evidential or legal burden on Arnhold to show positively that the court should not grant its sanction to the Scheme[33]. It is sufficient for Arnhold to raise an evidential or legal issue which OWHL has not met satisfactorily so that the court would not be justified in giving its sanction to the Scheme.

50. In order to assess whether OWHL has met its burdens, it is convenient to summarise the points taken by Arnhold against the grant of the court's sanction and then to consider OWHL's responses to those points.

51. Arnhold's objections can be divided into two general categories. In the first category there are three points which go to the jurisdiction of the court to sanction the Scheme. These include (a) the 'separate classes' issue (b) the 'non-disclosure' issue and (c) the 'voting' issues which go to the technical compliance with the mandatory requirements of a valid scheme.

52. In the second category there are the points which go to the exercise of the court's discretion whether to grant its sanction to the Scheme, which is broadly referred to as the 'fairness' issue.

53. The primary point is whether the Exchange Ratio was based on the wrong approach to valuation which Arnhold says produces a compulsory acquisition of the shares of those Scheme Shareholders who voted against (or did not vote in favour of) the Scheme on the basis of an exchange which is not fair. This is because it is said that the value of the Hansa Share Units which are the give and take for the exchange of the OWHL shares does not take into account the difference in the market price of OWHL shares when compared to the market price of the Hansa's shares on the announcement date. Arnhold says the Exchange Ratio should have been much higher, and consequently it would be unfair to compel the Scheme Shareholders who voted against the Scheme to exchange their OWHL shares on such 'unfavourable' terms.

54. Arnhold also made several subsidiary points in support of the fairness objection which included (i) whether the majority voted *bona fide* in favour of the Scheme in the interests of the class they represent (ii) whether in voting in favour of the Scheme the majority coerced the minority shareholders (iii) whether the majority who voted in favour of the Scheme fairly represented the members of the whole class (iv) whether the unfairness of the terms of the Scheme (viewed from the perspective of the minority who voted against the Scheme) represents a 'blot' on the Scheme which prevents the court from giving its sanction to it.

[33] Paragraph 8 of Arnhold's written submissions.

55. A number of these subsidiary points overlap but each point has been registered as a separate ground on its own and has been considered in the court's evaluation of the objections taken.

Terminology

56. Before embarking on the court's analysis of these points, it is necessary to address a few explanatory remarks about the use of certain terminology in the context of the statutory framework and related case law in which this application arises.

57. Section 99 of the Companies Act 1981 is a statutory mechanism whereby a majority in number representing three quarters in value (referred to in this judgment as "the statutory majority") who approve the scheme can bind the minority who voted against the scheme, and in effect compel the minority to accept the terms that the statutory majority have approved. The legislative policy behind this provision is of some antiquity[34]. The primary policy objective is to prevent a minority from frustrating the will of the statutory majority[35]. It is this context that the operative provisions of section 99 must be understood.

Minority

58. Arnhold has taken its objections in its own name, but it holds OWHL shares on behalf of its clients, and to that extent has presented its objections as representative of the interests of the minority who voted against the Scheme, and to some extent has presented legal arguments using the terminology of 'minority shareholders'[36].

59. Arnhold (and its clients) are of course a numerical minority of the shareholders who voted at the Scheme Meeting (leaving aside the technicality that the interests of Arnhold's clients are held indirectly and are not legally recognised as shareholders in their own right). However, I have avoided the term 'minority' or 'minority shareholders' because that term has many wider legal connotations and implies rights arising under a different aspect of the statutory protections offered to minority shareholders, as well as minority shareholder protections at common law.

60. There are, of course, well established general principles that govern the conduct of schemes of arrangement that give a measure of protection to all shareholders who are affected by a scheme, and to that extent those principles are a form of protection to the minority of shareholders who vote against the scheme.

61. To be clear, Mr Bompas KC did not for a moment suggest that the court has wide powers of minority protection under section 99; he simply put the case on the basis that the court should not sanction a scheme that was unfair (or unfavourable) to the minority. However, to ensure that

[34] The pre-cursors of these provisions can be traced back to section 136 of the English Companies Act 1862.
[35] The object of the section is *"..to enable compromises to be made which are for the common benefit of the creditors as creditors, or for the common benefit of some class of creditors as such…"* per Bowen LJ in **Re Alabama, New Orleans, Texas and Pacific Railway Co** (cited below) and the policy objective applies equally to compromises between the company and its members.
[36] Paragraph 64 of Arnhold's written submissions.

there is no confusion as to the meaning of the rights attaching to the expression 'minority' shareholders, I have avoided using that term[37].

Dissenters

62. It is also tempting to refer to the Scheme Shareholders who voted against (or did not vote in favour of) the Scheme as "dissenting shareholders" or "dissenters" as a matter of shorthand or convenience.

63. While it may be an accurate description as a matter of ordinary language to describe Arnhold as having dissented from the Scheme, the term "dissenting shareholder" also has important connotations of additional legal rights that arise under different statutory provisions under the Companies Act 1981. Those additional rights do not pertain to a scheme of arrangement under section 99 of the Companies Act 1981. Under a section 99 scheme, for example, there is no statutory concept of 'fair value' for the exchange of shares and the court is not engaged in appraising the 'fair value' of the shares acquired by compulsory acquisition or a merger or amalgamation under sections 103 or 106 of the Companies Act 1981. Similarly, there is no right to insist upon a cash alternative to be assessed at 'fair value' in a section 99 scheme of arrangement.

64. Again, Mr. Bompas KC did not for a moment suggest that there is any requirement for any of these features to be present in a scheme under section 99, but as part of a more general submission he did suggest that it would have been a better scheme if there had been (at least) a cash alternative based on fair value in support of his argument that the terms of this particular scheme are unfair [38].

65. The differences in terminology and legal rights are important considerations to be kept in mind when the court evaluates the expert evidence and the legal arguments presented as to 'fair value'. For these reasons, I have avoided using the term "dissenting" shareholders.

"Connected Shareholders" and *"Connected Parties"*

66. Arnhold presented its submissions by adopting the expression "Connected Shareholders" or "Connected Parties" when describing Mr. Salomon and his family, and Victualia, and Mr. Townsend and his family and Nomolas[39]. This term is different from the term "Related Parties" used in an ISS Governance recommendation referred to and relied upon by Arnhold, but it comes to the same meaning[40].

67. The use of a shorthand expression is of course not objectionable in itself, but it is vitally important to recognise that in an area of financial regulation capitalised terms invariably import a precise definition and usually impose consequent regulatory restrictions or obligations. However, the terms adopted by Arnhold to describe Mr. Salomon and parties related to him and Mr. Townsend and parties related to him collectively as "Connected Shareholders" or "Connected Parties" are not terms that import any legal meaning or effect. They are just collective nouns

[37] This is particularly relevant because Mr Drummond refers to "minority interests" in his report.
[38] Paragraph 32 of Arnhold's written submissions.
[39] Paragraph 25 of Arnhold's written submissions.
[40] HB1/413

used to describe the persons and relationships to which Arnhold refers for the purpose of suggesting that these persons fall into a separate class of Scheme Shareholders from the rest.

68. Of course, the court recognises that Arnhold's argument is to the effect that the commercial interests *that flow from* these direct and indirect holdings means that these particular shareholders must be put into a separate class from all the others. This is considered in detail below. But to define these shareholders as "Connected Shareholders" strongly implies that there is a legal significance to that term. There is none.

69. There is no evidence that there is such a term in the LSE listing rules, or the UK Takeover Code, and there is no reference in any of the case law or applicable legal principles that shareholders falling within this definition engages a special analysis of class composition. Because the terms "Connected Shareholders" and "Connected Parties" used by Arnhold have no established legal significance in the context of these proceedings, I have consciously avoided using those labels, at the expense of some economy and felicity of expression.

The court's jurisdiction

70. The court's jurisdiction under section 99 is well established and equally well understood. In **Re TDG plc**[41] Morgan J held that there were four matters that require the court's attention when considering whether to sanction a scheme of arrangement:

    (a) the court must be satisfied that the statutory requirements have been complied with;

    (b) the court must consider whether the class of shareholders was fairly represented by those who attended the meeting and that the statutory majority are acting *bona fide* and not coercing the minority in order to promote interests that are adverse to the class whom they purport to represent;

    (c) the court must be satisfied that an intelligent and honest person who is a member of the class concerned and acting in respect of his or her own interest might reasonably approve the scheme; and

    (d) there must be no 'blot' on the scheme.

71. There is no dispute that the Scheme is one in which there is "give and take" between the company and a class of its members, namely the Scheme Shareholders, and that the meeting was properly convened in accordance with the terms of the court's convening order. Arnhold however took issue with the class composition and took a few important ancillary points as to the adequacy of the information provided to the Scheme Shareholders in the explanatory statement. As these points go to the court's jurisdiction to sanction the Scheme they will be addressed first.

[41] [2009] 1 BCLC 445 [29]

Class composition

72. The well-known rule is that the classes of members in a members' scheme of arrangement (or creditors in a creditors' scheme) must be such that their rights against the company are not so dissimilar as to make it impossible for them to consult together with a view to their common interest[42].

73. Arnhold relied upon the dictum of Templeman J (as he then was) in **Re Hellenic & General Trust Ltd**[43] for the proposition that the shareholders who have cross holdings in Hansa have a distinct interest in the Scheme which the other shareholders do not because they hold shares in Hansa which is the 'purchasing' company, and a shareholder cannot be both a purchaser and a vendor under the same Scheme[44]. There was also a suggestion that because Messrs. Salomon derive profits from their holdings in HAML and HAML will manage OWHL's cash, this gives rise to a different interest[45].

74. The court is unable to accept those submissions. In a line of successive cases the courts have stated that the emphasis in the test is on the *rights* that the members have against the company in respect of which the Scheme is being proposed and not their private commercial interests or motivations outside the Scheme. In **Re BTR Ltd**[46] Chadwick LJ stated that it is not practical or required to hold separate meetings of shareholders who have the same rights but different interests or motivations in connection with the scheme.

75. Snowden J (as he then was) explained the position in **Re Sunbird Business Services Ltd**[47] that the question of class composition is primarily by an analysis of rights rather than individual interests. Snowden J referred to the long line of cases[48] which show that the court should not be overzealous in identifying differences which would create too many small classes carrying an inappropriate right of veto, and that an important safeguard against minority oppression is that the court retains a discretion to refuse to sanction the scheme.

76. The Privy Council has recently confirmed the approach to the question of class composition in scheme cases in **Cable & Wireless Jamaica Ltd v Abrahams**[49]. Templeman J's reference to commercial interests in **Re Hellenic & General Trust Co Ltd** was expressly disapproved[50]. The following statement of principle by Lord Millett NPJ in **UDL Argos Engineering & Heavy Industries Co Ltd v Oi Lin**[51] was approved and adopted and now represents the current law on the point[52].

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[42] **Sovereign Life Assurance Co v Dodd** [1892] 2QB 573, 583 per Bowen LJ.
[43] [1976] 1 WLR 123
[44] Arnhold's written submissions at paragraph 51.
[45] Arnhold's written submissions at paragraph 53.
[46] [2000] 740, 745-7.
[47] [2020] EWHC 2860 (Ch) [19] to [23].
[48] Including **Re Hawk Insurance Co Limited** [2001] 2 BCLC 48; **Re Telewest Communications plc** [2005] 1 BCLC 752; **Re Baltic Exchange Ltd** [2016] EWHC 3391; **Re Noble Group Limited** [2018] EWHC 2911
[49] [2025] UKPC 44.
[50] At [36]
[51] [2001] 1 HKC 172 HKCFA.
[52] At [29]

> *"The principle upon which the classes of creditors or members are to be constituted is that they should depend upon the similarity or dissimilarity of their rights against the company and the way in which their rights are affected by the scheme, and not upon the similarity or dissimilarity of their private interests arising from matters extraneous to such rights."*

77. It is right to acknowledge that the Privy Council recognised that the emphasis on rights as opposed to interests as the determining factor for the composition of classes does not exclude the consideration of differing interests, which may be highly relevant, but these are considered only at the sanction stage[53].

78. In this case, it is clear that all the rights of the Scheme Shareholders (as holders of ordinary shares in OWHL) are exactly the same. This was eventually accepted by Mr Drummond in his cross examination[54]. It is also clear that all of the rights that each Scheme Shareholder will receive in Hansa in exchange for their Scheme Shares are also exactly the same. The rights of the shareholders who have cross shareholdings in Hansa are no different to those shareholders who do not have shares in Hansa. There is therefore no basis upon which to divide the Scheme Shareholders into two classes for the purposes of the Scheme Meeting[55].

79. The court therefore accepts OWHL's submission that taking the 'rights in' and 'rights out' approach to assessing and drawing class boundaries was correct and that the Scheme Meeting was therefore properly convened and constituted. Arnhold's submission that *if* there had been two classes of Scheme Shareholder the Scheme would have failed is therefore not relevant: there was only one class of shareholders whose rights against the company are affected by the Scheme.

Disclosure

80. Arnhold also criticised the explanatory statement as not fully disclosing the financial benefits that would flow from the adoption of the Scheme. It was said that although the reduction in HAML's management fee rate from 1.00% to 0.8% was advertised as an attractive feature which would benefit the investors, it was not pointed out that the increased pool of assets would in fact increase the value of the revenue earned by HAML by approximately £1.0 million a year[56] (and therefore benefit the shareholders who had cross shareholdings in Hansa).

81. This appeared to be an objection both that (i) the effect of the Scheme was not fairly presented to the court at the convening hearing and (ii) the effect of the Scheme was not fairly disclosed to the Scheme Shareholders in the Explanatory Statement[57].

82. The obligation under section 100 of the Companies Act 1981 to send out an Explanatory Statement extends to the effect of the scheme upon the *rights* of shareholders and does not require a comprehensive disclosure or explanation of the commercial impact of the scheme on

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[53] At [38]
[54] See pages 33 to 35 of section B of the Transcript for 30 October 2025 ("T B33-5").
[55] This is not a case of the majority "*feasting"* on the rights of the minority, in the colourful phrase of Bowen LJ in **Re Alabama, New Orleans, Texas & Pacific Railway Co** (cited below).
[56] Paragraph 41 of Arnhold's submissions.
[57] See T A14.

third parties (i.e. parties other than the company and its shareholders in their capacities as such). The increase in overall fees generated by HAML is not as a result of the change in the rights of Scheme Shareholders, so it is not strictly a matter which needs to be disclosed in the Explanatory Statement. It is also something of a speculation, as there are any number of other factors which may affect the performance fee, including increases and decreases in asset values which drive the calculation of the fees.

83. The court is therefore not persuaded that this is a matter which would affect the validity of the Scheme Meeting, because it is not a fact which could amount to a material misrepresentation as to the *effect of the Scheme* in the Explanatory Statement which might have misled the Scheme Shareholders as to what they were voting for.

84. Nor does the court consider that this was a material failure to disclose to the court all relevant matters in fulfilment of OWHL's duty to give a full and fair presentation of the application being made to the court on the *ex parte* application for a convening order. For the same reasons, a failure to describe the potential commercial consequences for Hansa is not within the scope of the court's review of the effect of the Scheme on OWHL's shareholders.

Registration of depository interest holders as shareholders

85. Arnhold criticised the adequacy of the time allowed for dematerialised depository interest holders to become registered to vote in person or by proxy in their own right as Scheme Shareholders at the Scheme Meeting (instead of through MUFG). The implication seemed to be that if a holder of a dematerialised interest had wished to do so, he or she would have found it difficult in the time available. OWHL responded to this by showing that several dematerialised interest holders managed to become registered as shareholders in about a week using the advertised procedure. OWHL submitted that this demonstrated that sufficient time was allowed for anyone who wished to become registered as a shareholder before the date of the meeting. Arnhold replied by pointing out that those who did so were (in effect) insiders who were incentivised to ensure that there was a numerical majority of votes cast in favour of the Scheme[58].

86. Although the court would have been receptive to an argument that those who did not support the transaction were not given a proper opportunity (in terms of time) to become registered as shareholders so that they could mount opposition on the basis of numerical superiority, the evidence does not support the validity of this objection. First, the court accepts that there was sufficient time to become registered as shareholders. Second, there is no evidence that someone who wished to become registered was not able to do so because of administrative delay or inefficiency on the part of OWHL or its registration agents. The court therefore does not accept that (on the facts) there was any impediment on the ability of any depository interest holders who were opposed to the Scheme from becoming registered as shareholders in an effort to field a numerical majority to defeat the Scheme.

[58] Paragraph 35 of Arnhold's submissions.

The sanction hearing

87. Having dealt with the arguments concerning the legal adequacy of the preliminary steps taken to convene the Scheme Meeting, the court now turns to the question of sanction. The matters the court must consider are set out in the guidance of Morgan J in **re TDG Ltd** above. I shall address each of them in turn.

Have all the statutory requirements been complied with?

88. The court has already explained that the Scheme is one which involves an arrangement between the company and a class of its members and that the terms of the Scheme contain the necessary elements of "give and take" so that the court has jurisdiction to entertain the application[59].

89. The court has reviewed the Explanatory Statement and the terms of the Scheme and is satisfied that the requirements of section 100 have been met. All the material terms of the Scheme have been fully explained as to their meaning and their effect. Arnhold did not contend otherwise (except for the non-disclosure point which has already been considered and rejected).

90. The court has also explained why it was appropriate to convene a meeting of only one class of Scheme Shareholders. The court has also explained that the votes of the single class of Scheme Shareholders voted in favour of adopting the Scheme by the necessary statutory majority.

91. Therefore, the court is satisfied that all the statutory requirements for approval of the Scheme have been complied with so that the court can proceed to consider whether it is prepared to give its sanction to it.

Was the Scheme class fairly represented at the meeting?

92. This issue is really directed at ensuring that the turnout of voters was sufficiently large to represent the whole class. The evidence is clear. The Chair recorded votes in favour of approving the Scheme were cast by 59 Scheme Shareholders who were present in person or by proxy; and votes were cast against approving the Scheme by 18 Scheme Shareholders who were present in person or by proxy.

93. Although the physical number of Scheme Shareholders who voted in person or by proxy is small in comparison to the number of ultimate investors (whose interests are held by MUFG) those who cast votes represented 93.29% of the holders of the Scheme Shares, of whom 76.62% voted in favour of the Scheme and 23.38% voted against the Scheme. The court is therefore satisfied that the class was more than fairly represented by the representation of 93% of the class by value and the numerical attendance is explained by the large number of depository interests held by MUFG which counted as one vote. Even taking that feature into account, the necessary numerical majority meets the requirements of a fair representation of the class as a whole.

94. Arnhold took another point about the recording of the votes. It was said that the record was not clear as to exactly who voted, so that OWHL had not satisfied the requirement of proving who

[59] **Re Noble Group Ltd** [2018] EWHC 2911 (Ch)

had voted in favour. The court is satisfied on the evidence of the Chair[60], which was not challenged by opposing evidence, that the votes were recorded properly such that the court can be satisfied that the necessary majorities to approve the Scheme were obtained.

Did the Scheme Shareholders vote bona fide or did the majority coerce the minority?

95. Arnhold submitted that the Scheme has to be seen as part of a two-step process to the effect that the Tender Offer is in reality part and parcel of the takeover achieved by the Scheme. The Tender Offer, it is said, reduced the free float of shareholders who wanted to cash out and, in reducing the numbers who could (potentially) vote against the Scheme by the Tender Offer, OWHL increased the likelihood that the remaining Scheme Shareholders would approve the Scheme, given the irrevocable undertakings that had been given (including those from the shareholders who also hold cross-holdings in Hansa).

96. The submission was that the Scheme Shareholders who had cross shareholdings in Hansa were in effect voting in favour of the Scheme to promote their own interests as shareholders in Hansa and not in the interests of the class they represent[61]. It was also submitted that some shareholders who had already cashed out in the Tender Offer voted in favour of the Scheme because they also hold shares in Hansa, and likewise they were not voting in the interest of the other members of the class, but in the interests of increasing the value of their holding in Hansa which is now (after cashing out a proportion of their shares in OWHL in the Tender Offer) worth a lot more than their remaining stake in OWHL[62].

97. This submission was based on the well-known *dicta* in **Re Alabama, New Orleans, Texas & Pacific Railway Co[63]** as to the role of the court when considering whether to give its sanction to a scheme. The right approach was expressed in slightly different terms by each of the distinguished members of the Court of Appeal:

> *"The court also has to see that the minority is not being overridden by a majority having interests of its own clashing with those of the minority whom they seek to coerce. Further than that, the court has to look at the scheme and see whether it is one which persons acting honestly, and viewing the scheme laid before them in the interests of those whom they represent, take a view which can be reasonably taken by businessmen. The court must look at the scheme, see whether the Act has been complied with, whether the majority are acting bona fide, and whether they are coercing the minority in order to promote interests adverse to those to those of the class whom they purport to represent; and then see whether the scheme is a reasonable one or whether there is any reasonable objection to it; or such an objection to it as any reasonable may might say that he could not approve of it."*
>
> (Per Lindley MR)

[60] F Beck 1 at HB1/238-244 and Exhibit FEB 1 at HB1/248-395.
[61] Paragraphs 63-4 of Arnhold's submissions.
[62] Paragraph 60 of Arnhold's submissions.
[63] [1891] 1 Ch 213, (quotations at 238-9, 243-4 and 247 respectively).

"Now, it is very important to observe that creditors of the company may have other interests besides those of creditors, and that there may be a class of creditors composed of many individuals- some of whom have only interests as members of that class but others of whom may have interests of a predominant kind which they hold, not as members of that class, but because they belong also to some other class of creditors, or because they also belong to the body of shareholders of the company. Therefore, although in a meeting which is to be held under this section it is perfectly fair for every man to do that which is best for himself, yet the court, which has see what is reasonable and just as regards the interests of the whole class, would certainly be very much influenced in its decision, if it turned out that the majority was composed of persons who had not really the interests of that class at stake."

(Per Bowen LJ)

"Then the next inquiry is--Under what circumstances is the court to sanction a resolution which has been passed approving of a compromise or arrangement? I shall not attempt to define what elements may enter into the consideration of the court beyond this, that I do not doubt for a moment that the court is bound to ascertain that all the conditions required by the statute have been complied with; it is bound to be satisfied that the proposition was made in good faith; and, further, it must be satisfied that the proposal was at least so far fair and reasonable, as that an intelligent and honest man, who was a member of that class, and acting alone in respect of his interest as such a member, might approve of it. What other circumstances the court may take into consideration I will not attempt to forecast."

(Per Fry LJ)

98. The principal characteristics of these requirements are that in voting for the scheme, the members of the class must act in good faith, without coercing the minority by promoting their interests outside the class instead of those of the class as a whole, but they are entitled to vote in their own interests, provided that an honest and intelligent member of the class might reasonably approve of the scheme. The Court of Appeal did not attempt to make this an exhaustive definition.

99. Leaving aside the difficulties presented by defining the precise meaning of voting 'in good faith' and 'without coercion of the minority' in this context, the primary obstacle to Arnhold's submission is that there was no evidence that the Scheme Shareholders who have cross shareholdings in Hansa voted otherwise than in the interests of the class as a whole.

100. There is no factual basis upon which to found an allegation of a lack of good faith (which might connote a collateral objective) or any coercion (which implies a threat or subornment of the will of the minority in some manner). Absence of *bona fides* or coercion is not usually something the court can infer (except in circumstances where established independent facts clearly support such an inference).

101. Mr Bompas KC relied upon the economic advantages that some of the shareholders who voted in favour of the Scheme may well obtain from their holdings in Hansa (although some of these are speculative because they depend on the assumption that asset values will continue to be constant)

as being obvious indicators of motivation to act otherwise than in the interests of the Scheme Shareholders. Mr. Todd KC pointed out that in some respects the shareholders who own shares in Hansa will be voting against their own interests by voting for the Scheme because the Scheme will result in (i) a lower performance fee and (ii) recognition of a lower share value of their shares in OWHL.

102. However, the court is no position to assess the potentially unlimited variety of motivations and interests that shareholders may have had for voting either for or against the Scheme without some clear evidence. In **Re Dee Valley Group** Vos C observed:

> *"...I think the court is likely to take some persuading to interrogate precisely the members' reasons for voting as they did. Environmental factors might, for example, indicate that a takeover in the future by another bidder would be more advantageous for the existing shareholders. The thought processes of members are likely to be complex and intertwined and, unless it can be shown, as it was in both* ***British America Nickel*** *[1927] AC 369 and* ***Holders Investment Trust*** *[1971] 1 WLR 583, that members were motivated by their own interests in a quite different capacity, it will, I think, be hard to reject votes by looking into their minds."* [64]
> (Underlining added)

103. In the **British America Nickel** case cited in this passage, the bond holders had been offered a block of ordinary shares in return for their votes and they voted on that basis. In the **Holders Investment Trust** case, the trustees acted solely on what was interests of the trust and did not take into account the interests of the class of preference shareholders.

104. By contrast, in this case there is no evidence that the Scheme Shareholders acted otherwise than in the interests of the Scheme Shareholders as a class. The reference to consideration of the differing interests arising outside the Scheme at the sanction stage (made in paragraph 38 of the Privy Council's decision in **Cable & Wireless Jamaica v Abrahams**) must depend upon the evidence in each case. In the absence of evidence (or independent facts which are self evident) the court should be very slow to act on an inference drawn by the shareholders who voted against the Scheme without more. The court is not prepared to do so in this case.

105. In addition, there is no evidence of any coercion of the minority or any external facts which would support a suggestion of improper conduct in the promotion of the Scheme or the way in which the Scheme Meeting was conducted. Therefore, there is nothing upon which Arnhold's arguments can fasten, and so the court holds that there was no coercion of the minority which would engage the classic statement of principles in **Re Alabama, New Orleans, Texas & Pacific Railway Company** quoted above.

Fairness of the Scheme

106. The primary attack on the Scheme was that the terms of the Exchange Ratio are so unfavourable or unfair to shareholders who do not also hold shares in Hansa that the court should not grant its sanction to it. This submission is based on the market analysis by Arnhold, as well as other market commentators, and the expert evidence given by Mr Drummond on Arnhold's behalf.

[64] [2018] Ch 55

Expert opinion evidence

107. Mr Arnhold set out his perspective on the value received by OWHL shareholders under the Scheme and set out his criticism of the fairness of the exchange. While Mr Arnhold is a highly experienced investment adviser and runs a large and successful investment management business, his evidence is strictly not admissible as opinion evidence, so the court is unable to place any reliance on the opinions he expresses, although I have taken into account the purely factual evidence set out in his affidavits. Similarly, the market commentary in the reports that were referred to in the materials presented to the court in the form of stock reports from ISS Group[65] were not put forward as expert evidence, so the court is equally unable to place reliance on those statements. The court does not make any comment on the reliability of any of those statements nor should anything in this ruling be taken as a negative reflection on the sincerity or reliability of their respective statements as ordinary investment advice. Their statements are simply inadmissible as opinion evidence for the purposes of these proceedings and accordingly the court must leave them out of account in its assessment of the arguments made as to the 'fairness' of the Scheme.

108. The court is therefore limited to considering the opinion evidence as to valuation which was given by the witnesses who were formally tendered as valuation experts. These were Mr. Andrew Robinson of Deloitte LLP who gave expert evidence on behalf of OWHL, and Mr Martin Drummond of Teneo Financial Advisory Ltd who gave evidence on behalf of Arnhold.

List of issues

109. In preparation for the sanction hearing directions were given for the preparation of a list of issues to be addressed by the experts. These were agreed as follows:

    (1) Whether the Exchange Ratio values fairly the contributions of OWHL and Hansa and their respective shareholders in the combined group.

    (2) Whether the FAV-to-FAV valuation approach adopted for the combination was a fair and reasonable approach in the context of the merger between OWHL and Hansa.

110. Without oversimplifying the evidence given by each of the experts, which will be explained in more detail below, the essential difference between them boiled down to the appropriate method of valuing the contributions made by each of OWHL and Hansa to the resulting combined group.

111. In brief, Mr Robinson confirmed that in his view the FAV-to-FAV analysis that Hansa and OWHL had taken in reaching the Exchange Ratio resulted in a fair valuation of those contributions, such that the value of the Hansa Share Units given in exchange for the OWHL shares represented an equivalent proportionate value to the value of the assets contributed by OWHL.

112. In response, Mr Drummond accepted that FAV-to-FAV is an appropriate valuation methodology to adopt in combinations as a general rule, but he disagreed that it was the appropriate method in this case because (i) this method does not reflect the difference in trading price of the shares in

[65] Institutional Shareholder Services Inc. which is an independent proxy advisory service.

each or OWHL and Hansa and (ii) if the market price of each of Hansa and OWHL were adopted to valuing the exchange it would result in a much higher Exchange Ratio on a share for share comparison. His view was that the FAV-to-FAV approach overvalued Hansa's Share Units in comparison to OWHL's trading share value and resulted in an Exchange Ratio which was unfair to OWHL shareholders.

Mr Robinson's evidence

113. Even though the challenge to the fairness of the approach to calculating the Exchange Ratio was taken by Arnhold in opposition to the grant of the court's sanction, the burden of satisfying the court that the Exchange Ratio meets the requirements of a fair scheme remains on OWHL.

114. The court therefore starts by recounting the evidence given by Mr. Andrew Robinson whose evidence was tendered in support of the valuation approach taken in reaching the Exchange Ratio. Mr Robinson's evidence was presented in a full written report[66] to the court upon which he was cross examined. Mr Robinson is a highly qualified valuation professional with over 35 years of valuation experience[67].

115. The substance of Mr Robinson's evidence was (i) that the net asset value (NAV) of each of OWHL and Hansa on a standalone basis is the appropriate method to establish Fair Value of each entity (ii) the Formula Asset Value (FAV) represents the appropriate adjustments to that Fair Value in the context of a combination (iii) the Fair Value of the combined group is the aggregate of both company's FAV (iv) the Exchange Ratio can be calculated for each respective contribution to the combined group using NAV as the starting point for the appropriate adjustments to reach a FAV for each company[68].

116. In reaching a FAV-to FAV valuation Mr Robinson applied the Market Value valuation basis as defined in the International Valuation Standards, which Mr Robinson considered to be the equivalent of Fair Value. In reaching his estimation of Fair Value Mr Robinson rejected the Income Approach because it depends upon future cash flows and in order to project future income in the context of an investment vehicle was in effect the same as using a NAV approach. Mr Robinson rejected the Market Approach (i.e. the market values of the minority publicly traded share prices) because their actual values are directly linked to the Fair Value of the aggregate of their respective investment portfolios, and does not provide relevant metrics to benchmark, such as revenue and earnings. He concluded that the only available metric is the NAV which is captured by the Cost Approach to valuation, which he adopted[69].

117. In Mr Robinson's view the Cost Approach is appropriate for investment vehicles because the replacement cost of the business equates to the value at which its assets could be purchased in the market, which is the equivalent of the realisable value of its assets less the cost of settling its liabilities, i.e. the NAV. Mr Robinson tested the approach by positing various alternative situations from a valuation realisation perspective, as opposed to a shareholder preference perspective. These included retaining the listing or merging into the existing listed investment

[66] HB3 174-227
[67] HB3/216
[68] HB3/187
[69] HB3/192-3

vehicle, the orderly realisation of the assets at NAV, and the sale of the entire investment portfolio or share capital. In each of these situations, Mr Robinson expected the ultimate outcome would realise a value at or around NAV.

118. As a result Mr. Robinson concluded that NAV was the appropriate approach for calculating the Fair Value of each investment vehicle on a standalone basis because a willing buyer would not be prepared to pay more that the replacement cost of the portfolio and a willing seller would not be prepared to sell the entirety for less than what could be realised through a piecemeal sale or redemption of the positions at NAV in an orderly realisation of the portfolio[70].

119. Although Mr Robinson took into account the minority traded share price and market capitalisation history of both Hansa and OWHL, he did not consider that the share price defined the Fair Value of each company in its entirety. He considered that the minority share price can become dislocated from the value of the entirety of the company. While the minority share price can represent the value of the entirety of large capitalisation operating companies with a fully distributed shareholder base, Mr Robinson's view is that (based on his experience) the minority traded price in investment vehicles is often discounted to its NAV even though the holder of the entirety of the shares would be able to realise the investments at NAV in (for example) the orderly sale situation described above. In his view, the discount to NAV reflects the inability of a minority shareholder to realise directly the value of the underlying investments[71].

120. Mr Robinson reviewed market precedents for combinations of investment trusts over the past ten years and indicated that in all but two cases, a FAV-to-FAV was used as the basis for the exchange ratio[72]. Mr Robinson calculated the NAVs for each of OWHL and Hansa[73] and then excluded Hansa's investment in OWHL and made a number of adjustments to NAV to produce the FAV for each company[74]. Mr Robinson considered that the FAV reflect the fair valuation of the contributions of OWHL and Hansa to the combined group[75].

121. Mr Robinson's opinion on the Exchange Ratio is that each new of the 1.4925 Share Units in exchange for each OWHL share is calculated by dividing the OWHL FAV per OWHL share (valued at £20.16) by the Hansa FAV per Hansa Share Unit (valued at £13.51) provides OWHL shareholders with a number of new Hansa Share Units which provide a 'look through' interest in the Hansa FAV of the same value of their existing 'look through' interest in OWHL FAV. In the context of a FAV-to-FAV approach to valuation, Mr. Robinson considers this to be an appropriate calculation because the OWHL shareholders receive shares in the combined group which are proportionate to their proportionate contributions to the combined group. Accordingly, Mr Robinson's opinion is that the Exchange Ratio provides a fair valuation of the contributions made by each of OWHL, Hansa and their respective shareholders to the combined group[76].

[70] HB3/195
[71] HB3/196
[72] HB3/201
[73] HB3/206 table 5.1
[74] HB3/211 table 5.3 The adjustments included updated valuations of investment assets, expected costs of the combination and tender offer and costs, tax, and revaluation of OWHL's contribution to Hansa's NAV.
[75] HB3/212 at 5.24
[76] HB3/213 at 5.25 to 5.27

122. Mr Bompas KC cross-examined Mr Robinson on a number of areas to challenge Mr Robinson's endorsement of the FAV-to-FAV Exchange Ratio, the most significant of which are summarised briefly below.

123. Mr Bompas KC suggested that the combination of Hansa and OWHL was not a combination of two similar businesses because Hansa is a closed end investment fund and OWHL is a holding company which holds investments but also owned a majority interest in an operating company, the proceeds of sale of which are held in a cash holding, not in an investment portfolio. The premise of this line of questioning was that it was not appropriate to value the combination of the assets of the two entities by NAV but rather to value the OWHL shares at their market price relative to Hansa's share trading price.

124. Mr Robinson's response to this line of questioning was that (i) in reality Hansa and OWHL are both investment holding companies that own underlying investments[77] (ii) the fact that some of OWHL's holdings are presently in cash does not change the nature of the combination[78], (iii) the cash element makes the valuation process easier because cash is cash and there is no valuation uncertainty as to its value[79]. Mr Robinson saw no meaningful distinction between the two entities simply because one aspect of OWHL's business as a holding company was to hold an investment in an operating company, which is true of most holding companies[80].

125. Mr Robinson's list of comparative transactions was challenged on the basis that there was no single example of a transaction that was not a section 110 Insolvency Act 1986 transfer scheme, under which a dissenting shareholder has a right to insist on a cash purchase at fair value. Mr Robinson accepted that he did not have an example which did not involve such a scheme[81]. The point of this was that it was suggested that if the FAV-to-FAV did not reach a value that equated to the market value, the ordinary shareholder would always take the cash alternative, which suggested that a FAV-to-FAV Exchange Ratio that did not match market prices would be unfair.

126. Mr Bompas KC also pressed Mr Robinson on the different liquidity profiles of Hansa and OWHL, to similar effect, namely that OWHL was more a more liquid investment profile than Hansa. Mr Robinson's view is that enhanced liquidity is a trade off against improved opportunity for greater return in the long run[82]. Mr Robinson's view is that the FAV-to-FAV approach neutralises the impact of liquidity on value by assessing the actual value of the assets being contributed to the combined entity[83]. Mr Robinson accepted that share prices would be more relevant if the case involved a merger of two operating companies, but he disagreed that it was appropriate in the present case to base the Exchange Ratio upon market prices where the combination involved pooled investment vehicles[84].

[77] T A/24-5
[78] T A/48
[79] T A/43
[80] T A/24-5, 28, 47
[81] T A/30, 35
[82] T A/ 46, 48
[83] T A/53
[84] T A/67-8

Mr Drummond's evidence

127. Mr. Drummond is a qualified valuation expert with more than 25 years of experience[85]. Mr. Drummond did not disagree with the statement of valuation principles adopted by Mr Robinson, but instead he suggested that the appropriate valuation approach should be Equitable Value as defined by the Investment Valuation Standards Council[86]. This because the Equitable Value approach takes into account specific circumstances of the known, willing parties involved in the transaction, and was more relevant where a minority shareholder is not willing or informed, or faces prejudicial conduct and aims to ensure fair compensation for the minority shareholders, even if they are not willing or informed participants, because the usual conditions of a market transaction do not apply[87].

128. In preparing his report, Mr Drummond says that he addressed the two questions in the List of Issues (set out in his instructions[88]) with reference to Equitable Value as to:

    (1) Whether the two groups of respective shareholders of each company to the merger are fairly treated from a financial perspective; and also

    (2) Whether any distinct classes of shareholdings of either Hansa or OWHL are being fairly treated vis-a-vis other classes of shareholdings in that same company[89].

129. Mr Drummond said that in his view the FAV-to-FAV approach was only appropriate when the underlying investments in the tow companies that are merging are equally liquid, or when one or both of the companies are not publicly traded. In this case OWHL holds a large sum of cash from the sale of its Brazilian business. The mismatch in liquidity was reflected (in his opinion) in the LSE share prices of Hansa compared to OWHL[90]. He said that where a listed investment fund has a higher proportion of liquid investments in its portfolio, it is likely that the discount to NAV of the share price is likely to be lower. The Exchange Ratio does not (in his view) adequately account for the differences in the liquidity profiles of each of the combining entities.

130. As a result, Mr Drummond considers that a more appropriate approach is to adopt the listed share price which would reflect the market value of an uninfluential minority interest in the equity of each company, which are both actively traded on the LSE so as to make their comparison more directly apposite.

131. Mr Drummond's view is that the Exchange Ratio based on the FAV-to-FAV methodology adopted by the Scheme overstates the value of the Hansa Share Units being exchanged for OWHL shares by 41.4%. The appropriate Exchange Ratio should be (in Mr Drummond's view) 2.1102 New Hansa Share Units per one OWHL share as opposed to the 1.4925 New Hansa Share Units provided for in the Scheme[91]. Mr Drummond therefore concludes that the Exchange Ratio

[85] HB3/274
[86] International Valuation Standards Council IVS 104: Bases of Value
[87] HB3/234
[88] HB3/276: it has been noted that historically Hansa's shares trade at a 40% discount to NAV and OWHL's shares have historically traded at a 30% discount to NAV.
[89] HB3 235
[90] HB3 236
[91] HB3 238

in the Scheme does not fairly value the contributions made by OWHL and Hansa to the combined entity.

132. Mr Drummond also indicated that he considered the overlap in the shareholdings in Hansa and OWHL is relevant because the merger will transfer value from one set of shareholders to another and the benefit the "cross shareholders" by (in effect) increasing the value of their shareholdings in the combined entity[92]. Mr. Robinson also notes that after the merger, the cross shareholders will control 50.5% of the voting shares of the combined entity. He also notes that after the merger, the OWHL shareholders will hold 41.4% and Hansa shareholders will own 58.6% of the combined group.

133. Mr Drummond said that the OWHL shareholders could achieve a higher return in an alternative structure which involved a cash dividend and a proportionately reduced exchange of New Hansa Share Units for their shares which would return the cash element of OWHL's holdings to the OWHL shareholders[93]. Mr Drummond supported his analysis by reference to the recent share price movements following the announcement of the detailed terms of the all-share combination, and the increase of the value of Hansa shares and corresponding reduction in the share prices of OWHL shares. He said that this reflects the market's view that the Exchange Ratio is unfavourable to OWHL's shareholders[94].

134. Mr Drummond explained why he considers the share price to be the fair value of the shares in both companies, and hence a better basis upon which to calculate the Exchange Ratio. In summary Mr Drummond says that the shares in both Hansa and OWHL are traded regularly with adequate investor participation to be a true reflection of market value, even though he accepted that OWHL's shares have a higher trading liquidity than Hansa shares.

135. Mr Drummond proposed an Exchange Ratio based on implied market capitalisation based on unaffected share price immediately prior to the announcement of the terms of the merger on 16 June 2025. This resulted in his calculation that the Exchange Ratio should have been 2.2202 Hansa Share Units[95].

136. Accordingly, Mr Drummond concluded that the FAV-to-FAV approach to valuation was not a fair and reasonable approach to the calculation of the Exchange Ratio and that OWHL would achieve a higher return if the cash held by OWHL were distributed to OWHL shareholders prior to the conclusion of the merger and a lower Exchange Ratio for Hansa Share Units per OWHL share after the distribution of the dividend[96].

137. In his cross-examination by Mr Todd KC, Mr Drummond agreed that this was a merger of two companies and that the exercise he was engaged in was to value contributions of the two companies to the merger[97]. Mr. Drummond also accepted that all holders of the rights affected under the Scheme were exactly the same and they all received exactly the same rights in return[98].

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[92] HB3 242
[93] HB3 253-4
[94] HB3 257
[95] HB3 267
[96] HB3 270-1
[97] T B/13.
[98] T B/14 and 30, 31, 35 and 36.

Mr Drummond suggested that his role was to consider how the merger fairly treats the shareholders including minority shareholders as a different class[99] but agreed that it would be appropriate to ascribe a higher value to shares in a transaction where those shares carried a control premium. He accepted that in a transaction where the majority carried control it would be unfair the majority did not receive higher value to reflect that premium[100].

138. Mr Drummond maintained that his role was to look at the interests of the minority based on his interpretation of his instructions[101]. Mr Drummond also accepted that it would be fair and reasonable for OWHL shareholders to get the same consideration in return for each share[102]. Mr Drummond also accepted that it would be fair and reasonable for the OWHL shareholders to suffer any losses on the transaction in the exactly the proportions to each other across the board[103].

139. Mr Drummond accepted that a FAV-to-FAV approach could be more favourable than a market price transaction because it values all the assets as if they were being liquidated, although Mr Drummond pointed out the assets are not being liquidated in this case and the OWHL shareholders cannot access the share value under this Scheme[104]. Mr Drummond accepted that FAV-to-FAV avoids the necessity to make comparisons of share value based on external market pressures[105].

The court's evaluation of the expert evidence

140. In evaluating the evidence given by the experts, I have kept in mind that this is not a case in which the court has itself to arrive at a valuation of the OWHL shares or a valuation of the Hansa Share Units to be given in exchange. This is not an appraisal case, nor is the court engaged in evaluating the fair value of a minority shareholder's interest for the purposes of setting the acquisition price in a minority shareholder's petition under section 111 of the Companies Act 1981 (whereby the court may be asked to make an order that the majority purchase their shares at their fair value, less any applicable minority discount).

141. This is a scheme under section 99, and the court does not need to reach any conclusion as to whether the Exchange Ratio achieves "fair value" in accordance with strict valuation principles. It is the court's function only to determine whether the terms of the particular scheme are sufficiently fair and reasonable that an intelligent and honest person acting in his or her own interests might vote in favour of it[106]. A section 99 scheme invariably involves a compromise or alteration of rights such that (almost by definition) it involves the class affected giving up something of value (or some right) in exchange for some other benefit (or right) which is not (or is often not) of equivalent value or utility. If the statutory majority has approved the scheme then, like it or not, the minority is bound by its terms, unless the court considers that there is a feature

[99] T B/21-2.
[100] T B/24, 40 and 53.
[101] T B/25, 27, 32 and 33.
[102] T B/37, 42, 45 and 46.
[103] T B/7-8, 52 and 59, 60.
[104] T B/70, 76.
[105] T B/81.
[106] See in particular Fry LJ's formulation of the court's function in the **Alabama, New Orleans, Texas and Pacific Railway Co** cited above.

which makes the terms of the scheme inherently unfair, oppressive or repugnant such that it should withhold its sanction.

142. In the words of Hildyard J in **Re Lehman Brothers International Europe**[107] there must be some "overriding unfairness" in the scheme (or in the manner in which it has been presented or explained) to justify the court in withholding its sanction to a scheme which has been approved by the statutory majority. This is because the court has always adopted the policy of deferring to the wisdom and business judgment of the members of the scheme class in deciding what is in their own best interests[108].

143. In **Re SphinX Group of Companies**[109] Smellie CJ said that the role of the court at the sanction hearing[110] is

> *"….a limited one. Although it is often referred to as the stage at which the court will consider issues relating to the fairness of the proposed scheme, the task of the court at the sanction hearing is not to pass its own subjective judgment on the merits of a scheme. The court takes the view that in commercial matters, members or creditors are much better judges of their own interests than the court."*

144. The case law also makes it clear that the scheme does not have to be the best scheme, or the only scheme[111]. This point is relevant because it was suggested by Mr Drummond that the Scheme ought to have been proposed on the basis of a share exchange at a lower Exchange Ratio combined with a cash dividend to achieve an equitable value. Mr Bompas KC submitted that there ought to have been a cash out alternative at something close to the market value of the shares.

145. Of course, it is understood that both Mr Drummond and Mr Bompas KC made those points to illustrate that the Exchange Ratio does not achieve fair value, not because they were suggesting that the court can amend the Scheme. But the terms of the Scheme as proposed are the terms which have been put forward and voted upon by the Scheme Shareholders, and the central question is whether those terms are ones which an honest and intelligent shareholder, having regard to the interests of the class as a whole, might approve.

146. Mr Robinson suggested that the choice facing a shareholder in relation to this Scheme was whether to accept the Scheme in the hope of long term growth in value based upon the perceived strengths of the combined group, or to refuse those terms and keep the present market value of the shares and to sell the shares at the best market price in the short to medium term. The court accepts that as a fair summary of the position and cannot see that there is anything inherently unreasonable or irrational with a shareholder taking a long-term view, nor anything inherently unfair in the statutory majority deciding to vote in favour of that investment strategy. In my

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[107] [2018] EWHC 1980 (Ch) at [66].
[108] *"…the court will be slow to differ from the views of the class, and will not do so unless satisfied that there has been some material oversight or miscarriage."* **Re English, Scottish, and Australian Chartered Bank** [1893] 3 Ch 385, 409 and **Re Telewest Telecommunications (No 2)** [2004] EWHC 1466 per David Richards J (as he then was) at [22] and **Re BTR plc** [2000] 1 BCLC 740,747 per Chadwick LJ.
[109] (2014) (2) CILR 152 at 3.
[110] In respect of provisions under the Cayman Islands Companies Law that are identical to those under section 99 of the Bermuda Companies Act 1981.
[111] **Re Telewest Communications plc (No 2)** (supra) at [21].

view, it is a decision that an honest and intelligent person who is a Scheme Shareholder might approve.

147. Mr Drummond's evidence was premised on his understanding of his instructions (to which he returned on several occasions when pressed) to consider the interests of the minority and that this was not a transaction entered into by a willing seller. In my judgment, this undermines the force of his evidence in several respects.

148. Mr Drummond accepted (as he had to) that the rights being exchanged were exactly the same so that there was no difference between any of the shareholders, and that their right in and rights out were treated in the same way. He had to accept (and it follows) that there is only one class of shareholders. Accordingly, with due respect, Mr Drummond's references to a class of minority shareholders were, in this context, misplaced.

149. This also shows that the gloss Mr Drummond put on his instructions was not justified. He says that he interpreted his instructions to mean that he was to consider "*whether the two groups of respective shareholders of each company to the merger are fairly treated from a financial perspective*" and "*whether any distinct classes of shareholdings of either Hansa or OWHL are being fairly treated vis-a-vis other classes of shareholdings in that same company*". Unfortunately, this misunderstanding may have led Mr Drummond to approach his task from the wrong starting point and (in my view) has led to conclusions that do not respond to the questions he was asked to address.

150. Mr Drummond's instructions did not include a direction to consider the interests of minority shareholders or dissenting shareholders as a separate class. His job was to consider whether (i) the FAV-to-FAV values fairly the contributions of OWHL and Hansa and their various respective shareholders in the combined group and (ii) whether the FAV-to-FAV valuation approach adopted for the combination was a fair and reasonable approach in the context of the merger.

151. Mr Drummond accepted that FAV-to-FAV methodology is very often a fair and reasonable approach in merger situations[112], but he said that he considered that this method was inappropriate in the circumstances of the present case. Mr Drummond took the position that there is a fundamental difference between the investment portfolios of Hansa and OWHL because of the liquidity of one compared to the other. This theme was naturally adopted by Mr Bompas KC in his submissions. However, the court does not consider this distinction to be meaningful in the present context.

152. In the first place, although Mr Bompas KC made the submission in opening[113] that one limb of OWHL's business was an operating business, this is not strictly true. OWHL did not operate the underlying business. As described above, OWHL owned its 56.47% interest in Wilson Sons SA (which actually operated the maritime logistics and shipyard businesses in Brazil) through two subsidiaries. The court agrees with Mr Robinson that this structure is true of many holding companies and simply reflects a type of investment activity. The underlying operational business was carried on by a 'great-grandchild' company not by OWHL. The apparent distinction drawn by Mr Drummond and Mr Bompas KC between OWHL's business and Hansa's business on the

[112] HB3/248
[113] T A/12.

strength of the fact that OWHL had a "stream" of business activity that was an operational business is therefore unconvincing. OWHL and Hansa are both holding companies which manage underlying investments in a wide range of activities.

153. In the second place, the cash derived from the sale of the shares in Wilson Sons SA is a recent development. Until June 2025, until the sale occurred there were routine dividends that passed up to OWHL (through OW Overseas (Investments) Ltd and Oceans Wilsons Overseas Limited) in the conventional way. After the sale, the decision of what to do with the proceeds of sale of the shares in Wilson Sons SA was within the power of the boards of the underlying subsidiaries (in the first instance) and then the board of OWHL, after a dividend of the sale proceeds was ultimately received by OWHL.

154. In the third place, when the appropriate adjustments are made to take account of Hansa's investment on OWHL, the liquidity profiles of Hansa and OWHL are not dissimilar (Hansa 66.2% OWHL 48.9%)[114].

155. The court therefore does not accept the premise advanced by Arnhold that OWHL's investment business is inherently different from Hansa's investment business nor that the cash presently held by OWHL as a result of the realisation of its (indirect) investment in Wilson Sons SA changes the approach to the valuation of OWHL's underlying investments. The fact that OWHL is listed in a different category from Hansa on the LSE is not determinative of the way OWHL's assets are to be valued for present purposes.

156. Arnhold's submission that these proceeds of sale ought to be distributed by way of dividend to OWHL shareholders misunderstands the role of the OWHL's board. The payment of a dividend to shareholders is of course one option available. But, as Mr Berzins stated in his evidence[115], the application of the proceeds of sale is always subject to the exercise of OWHL's board's management powers to consider what is in the best long-term interests of OWHL and its shareholders[116].

157. This seems to have been overlooked or entirely discounted by Mr Drummond who suggested that the most appropriate way to approach the Exchange Ratio was to make a distribution of the cash and then exchange the OWHL shares for a (smaller) number of Hansa Share Units. This idea does not take into account the fact that OWHL's board has already made the strategic decision to pursue a merger with Hansa. The statutory majority of Scheme Shareholders (of which there is only one class) are prepared to accept the Exchange Ratio to give effect to the merger. The only question for the experts is to express a view as to whether the FAV-to-FAV valuation is a fair and reasonable approach to value the respective contributions of underlying assets in each to arrive at an appropriate Exchange Ratio.

[114] HB3/318.
[115] HB3/3-4 at paragraphs 9-11.
[116] HB5/107 paragraph10. There was criticism by Arnhold that Mr Berzins had overstated the position because Mr Berzins said that the board had decided to reinvest the remaining proceeds of sale whereas no such decision had been taken. Nothing turns on this because it is clear that the independent committee of the board had made no decision, until the outcome of the Scheme Meeting was known.

158. Mr Drummond made a number of points which reflected his interpretation of his instructions[117] to the effect that the shareholders would be better off if the Scheme had been promoted on different terms, namely on terms that would enable the Scheme Shareholders who voted against the Scheme to get access to the present market value of the OWHL shares[118]. Mr Drummond was stalwart in his defence of his thesis in the answers he gave in cross examination, but his unwillingness to answer direct questions with direct answers suggested a lack of dispassionate objectivity. His interpretation of his valuation instructions made it clear that he was promoting a point of view that was outside the scope of the task he had been asked to undertake.

159. However, Mr Drummond was prepared to accept that the fundamental concept behind the merger was to bring the two businesses together as a single entity and that the Exchange Ratio was to recognise the value of the contributions made by each of the combining entities[119]. He also agreed that a FAV-to-FAV approach was a fair and reasonable approach in establishing an Exchange Ratio[120], although he disagreed that it was appropriate in this case because of his views which have been summarised already.

160. Mr Robinson expressed his views on the Exchange Ratio in objective and measured terms and was prepared to accept where he was unable to assist the court or where his instructions had not covered subjects raised in cross examination. The court prefers Mr Robinson's assessment that there is no meaningful distinction to be drawn between OWHL and Hansa[121] as investment vehicles based on its realisation of the value of its investment in Wilson Sons SA. The court also accepts Mr Robinson's evidence that the FAV-to-FAV approach to establish the Exchange Ratio is a fair and reasonable approach to take in the context of a merger where the exercise is aimed at valuing the respective contributions made by the combining parties.

161. The effect of the FAV-to-FAV methodology is to value the contributions to the combined group *as if* each shareholder's respective proportion of the underlying NAV has been realised and gives recognition of that NAV by Share Units that reflect an equivalent proportion of the resulting NAV of the assets of the combined group. The external influence of market conditions that may affect each company's share price have been excluded, but in my view the exclusion of each company's comparative share prices in that calculation that does not make the FAV-to-FAV approach used to arrive at an Exchange Ratio inherently unfair.

162. In accepting Mr Robinson's evidence, the court is not saying that this was the only approach that could be taken to establish the Exchange Ratio, nor that this is the best or most favourable approach, nor the one that achieves the best result for every Scheme Shareholder. The court is however not able to say that this approach is fundamentally wrong from a valuation perspective, nor that it is so unreasonable or unfair in its results that the court finds it repugnant. All Scheme Shareholders are treated alike, and they each have had the opportunity to decide for themselves if they support it or oppose it.

[117] T Part B pages 59-60.
[118] T Part B page 69.
[119] T Part B page 11.
[120] T Part B pages 39, 88 and HB3/248 at 5.1.1.
[121] T Part A pages 24-5.

163. On the face of it, the Scheme provides for an exchange of shares that an honest and intelligent person might approve. The majority of the Scheme Shareholders may well have accepted the recommendation of the independent board committee that the combination of OWHL and Hansa represents the best long term strategic direction for OWHL to take. That is a matter ultimately for individual judgment by each Scheme Shareholder. The nature of the section 99 scheme mechanism is that the statutory majority can bind the minority to the terms approved at the scheme meeting. The court will not substitute its own view of the merits of this Scheme by refusing its sanction unless there is some "overriding unfairness" in its terms, as to which the court is not persuaded.

Is there a blot on the Scheme?

164. Finally, the court must consider whether there is a blot on the Scheme that would prevent the court from giving its sanction. Mr Todd KC submitted that the term blot has been interpreted as meaning a technical defect which would prevent the Scheme taking effect, such as a technical flaw or that it does not work according to its own terms[122]. In **Re Thames Water Utilities Holdings Limited**[123] (in a combined judgment) the English Court of Appeal has recently explained the concept of "blot" in the following terms:

> *"Without purporting to define its limits for all circumstances, the concept of "blot" is undoubtedly capable of covering in case where the scheme or plan contains a technical defect so that it is unworkable or incapable of achieving what was intended. It is equally capable of covering a case with the scheme or plan requires the company to take, or contemplates it taking, a step which is illegal, ultra vires, or in breach of some other obligation owed by the company, even where the obligation is owed to persons who are not members or creditors of the company. No case has found a block to exist other than in such circumstances, and in both* ***BAT Industries*** *and* ***Halcrow Holdings****, in the absence of such circumstances, the court was not prepared to find that there was a blot."*

165. This court gratefully adopts this explanation of the term "blot" for the purposes of describing the normal circumstances in which the court may withhold its sanction to a scheme under section 99. The court does not consider that any of the features of the Scheme that have been challenged by Mr Bompas KC in this case would fall within the category of "blot" as described by the English Court of Appeal.

166. The court recognises that the English Court of Appeal has not attempted to define the limits of what can amount to a blot. It is therefore possible that the terms of a scheme may be such that a court would be unwilling to grant its sanction to it as a result of features the court found to be repugnant to public policy or which involve some "overriding unfairness", and the court leaves that point open for future debate. I am prepared to say that none of the circumstances relied upon by Arnhold in this case give rise to any concern of that kind, and therefore the court will not withhold its sanction on the basis of a "blot" on the Scheme.

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[122] **Re The Co-operative Bank Plc** [2017] EWHC 2269
[123] [2025] EWCA Civ 475 at 199 per Sir Julian Flaux, Zacaroli LJ and Sir Nichols Patten LJ.

Conclusions

167. For the reasons explained above, the court has concluded that:

(i) all the statutory requirements for the convening of the Scheme Meeting and the sanction hearing have been complied with;
(ii) there is only one class of Scheme Shareholders to which the Scheme applies;
(iii) the Scheme was approved by a majority in number and three quarters in value by those present and in attendance in person or by proxy at the Scheme Meeting;
(iv) the members of the class were fairly represented at the meeting;
(v) the terms of the Scheme are such that an honest and intelligent member of the class acting in his or her own interests but having in view the interests of the class as a whole might approve them;
(vi) there is no evidence of a lack of *bona fides* on the part of the majority who voted for the Scheme;
(vii) there is no evidence of any coercion of the Scheme Shareholders who voted at the Scheme Meeting;
(viii) there is no overriding unfairness in the terms of the Scheme;
(ix) there is no blot on the Scheme that would prevent its effectiveness or otherwise that would justify the court in refusing to grant its sanction to the Scheme.

Court Sanction

168. Accordingly, the court grants its sanction to the Scheme.

Costs

169. This was a contested application for the grant of the sanction and the normal rules as to costs apply. Unless Arnhold applies within 14 days of this order to be heard as to why the costs of the petition should not be paid by the unsuccessful party, the court will order Arnhold to pay the costs of the petition to OWHL (to be taxed if not agreed) on the standard scale with a certificate for two counsel.

Order

170. Counsel for OWHL will draw an Order to reflect the court's decision.

2 December 2025

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Martin J