SUPREME COURT OF QUEENSLAND

CITATION:	*Re QT Mutual Bank Ltd* [2016] QSC 228
PARTIES:	**QT MUTUAL BANK LTD** **ABN 83 087 651 054** (applicant)
FILE NO/S:	SC No 9068 of 2016
DIVISION:	Trial Division
PROCEEDING:	Originating Application
DELIVERED ON:	21 September 2016, *ex tempore*
DELIVERED AT:	Brisbane
HEARING DATE:	21 September 2016
JUDGE:	Bond J
ORDER:	**The order of the Court is that:**

1. Pursuant to subsection 411(1) and section 1319 of the *Corporations Act* 2001 (Cth) (Act):

(a) the Applicant, QT Mutual Bank Limited (QTMB), convene a meeting of QTMB members (Scheme Meeting) for the purpose of considering, and if thought fit, agreeing (with or without modification) to a scheme of arrangement proposed between QTMB and the said members (Scheme) being the Scheme substantially in the form of that contained in the explanatory statement in relation to the Scheme (Scheme Booklet), which is at Tab 8 to Exhibit "PW-1" to the affidavit of Peter Geoffrey Whitelaw sworn on 19 September 2016 (Mr Whitelaw's Affidavit);

(b) the Scheme Meeting be held on Wednesday, 2 November 2016 at the Royal International Convention Centre, 600 Gregory Terrace, Bowen Hills in the State of Queensland;

(c) the Chairperson of the Scheme Meeting be Peter Geoffrey Whitelaw and, in his absence, John Thomas Fisher-Stamp;

(d) the Chairperson appointed to the Scheme Meeting has the power to adjourn the Scheme Meeting in his absolute discretion;

(e) except for procedural motions, all voting at the Scheme Meeting be by poll as declared by the Chairperson;

(f) the Scheme Booklet and proxy forms in respect of the Scheme Meeting substantially in the form of the documents which are at 22 and 23 to Exhibit "PW-1" of Mr Whitelaw's Affidavit (Proxy Forms) are approved for distribution to QTMB members.

2. Pursuant to section 1319 of the Act, on or before 6 October 2016 there be dispatched to:

(a) each QTMB member who has nominated an electronic address for the purposes of receiving notices of meeting and proxy forms from QTMB, at such address, an email substantially in the form of the documents exhibited at Tabs 18 and 19 of Mr Whitelaw's Affidavit.

(b) each other QTMB member, by hand at, or prepaid post or courier to, the address of that QTMB member as set out in the register of members of QTMB, a copy of the Scheme Booklet and the proxy form exhibited at Tab 22 of Mr Whitelaw's Affidavit.

3. Regulations 5.6.12 and 5.6.14 to 5.6.36A of the *Corporations Regulations* 2001 (Cth) will not apply to the Scheme Meeting.

4. Notice of the hearing of an application pursuant to subsection 411(4)(b) of the Act for orders approving the scheme of arrangement be published by an advertisement in The Courier Mail newspaper substantially in the form of "Annexure A" to this order, such advertisement to be published on or before 1 November 2016, and the Applicant be otherwise exempted from compliance with rule 3.4 of the *Corporations Proceedings Rules*.

5. The Originating Application filed on 6 September 2016 is adjourned to 9 November 2016.

6. Liberty to apply on 2 days' notice.

CATCHWORDS: CORPORATIONS – ARRANGEMENTS AND RECONSTRUCTIONS – SCHEMES OF ARRANGEMENT OR COMPROMISE – APPLICATION FOR ORDER FOR MEETING – where applicant proposes scheme of arrangement between itself and all of its

shareholders – whether the Court should make an order to convene a meeting of the applicant company's shareholders

Corporations Act 2001 (Cth), s 411, s 412

Fraser v NRMA Holdings Ltd (1995) 55 FCR 452, cited
FT Eastment & Sons Pty Ltd v Metal Roof Decking Suppliers Pty Ltd (1977) 3 ACLR 69, followed
Re APN News and Media Ltd (2007) 62 ACSR 400, cited
Re Archaean Gold NL (1997) 23 ACSR 143, cited
Re Bolnisi Gold NL (No 2) (2007) 165 FCR 45, cited
Re Crusader Ltd [1996] 1 Qd R 117, cited
Re Golden Circle Ltd [2008] QSC 298, followed
Re Hills Motorway Ltd (2002) 43 ACSR 101; [2002] NSWSC 897, followed
Re Macquarie Private Capital A Ltd (2008) 26 ACLC 366, cited
Re NRMA Ltd (No 1) (2000) 156 FLR 349, cited
Re Permanent Trustee Company Ltd (2002) 43 ACSR 601, cited
Re Queensland Professional Credit Union Ltd (No 1) [2016] QSC 73, followed

COUNSEL: M Oakes SC for the applicant
L Kelly QC for Royal Automobile Club of Queensland Ltd

SOLICITORS: Clayton Utz for the applicant
McCullough Robertson for Royal Automobile Club of Queensland Ltd

Introduction

[1] This is the first Court hearing in respect of an application pursuant to s 411 of *Corporations Act* (which I will refer to as "the Act") concerning a scheme of arrangement between the applicant, QT Mutual Bank Ltd (which I will refer to as "QTMB") and its members.

[2] For the scheme to proceed, a meeting of QTMB members must be convened pursuant to court orders made under s 411 of the Act. The present hearing involved an application under s 411 of the Act for orders:

(a) convening a meeting of QTMB to consider and vote on the scheme, together with ancillary orders; and

(b) approving the explanatory statement to be sent to members before the meeting as required by s 412(a) of the Act.

[3] In the event that those order are made and a meeting is convened and the scheme approved, it would be necessary for a second hearing to be held in which an application is made for the approval of the scheme by the Court.

[4] As I observed in *Re Queensland Professional Credit Union Ltd (No 1)* [2016] QSC 73, the key issues which a court in my position must consider at the first Court hearing are as follows:

(a) whether the application is a part 5.1 body;

(b) whether what is proposed is to be regarded as a compromise or arrangement within the meaning of that term in s 411;

(c) whether the arrangement is with the applicant's members or any class of them;

(d) whether there has been appropriate disclosure in the explanatory statement and the statement contains the prescribed information;

(e) whether there is any apparent reason why the scheme should not in due course receive the court's approval if the necessary majority of votes is achieved by the meeting convened by the court order; and

(f) whether appropriate notice of the application has been given to the Australian Securities Investment Commission (which I will refer to as "ASIC").

[5] I will first outline the nature of the proposed scheme and then consider each of those matters in turn.

The nature of the proposed scheme

[6] QTMB is an unlisted public company, and is a member-owned mutual bank offering a range of range of retail banking products to the education community, their families and the wider community. QTMB is based in Brisbane. Its estimated equity value of QTMB is $150 million.

[7] The terms of the proposal are set out in the scheme booklet which is exhibited to the affidavit of Mr Whitelaw.

[8] On 30 March 2016 QTMB and the Royal Automobile Club of Queensland Ltd (which I will refer to as "RACQ") signed a Merger Implementation Agreement regarding a merger proposal between them. I will refer to that agreement as "the MIA". A consolidated copy of the MIA, including some amendments made subsequently, is also exhibited to Mr Whitelaw's affidavit.

[9] Through the proposed merger, QTMB will become the new banking arm of RACQ. As RACQ currently does not have a banking division, it is proposed the merged entity will be able to retain QTMB's employees and leverage their expertise and knowledge in banking.

[10] The principal elements of the merger proposal are as follows.

[11] First, QTMB members will transfer their shares to Club Finance Holdings Limited (which I will refer to as "Club Finance") which is a subsidiary of RACQ.

[12] Second, that QTMB members will receive:

(a) for each QTMB member other than an Overseas Holder, the issue of a Legacy Share under the scheme of arrangement and in accordance with cl 4.2 of the MIA; and

(b) for each Overseas Holder, payment of $10 and the agreement to make the payment contemplated by cl 3.2(a)(ii) of the QTMB Overseas Members' Deed Poll (subject to the terms of that document).

[13] Third, payment of the Scheme Consideration is secured by deeds poll executed by both RACQ and Club Finance.

[14] Fourth, the scheme will implement the merger proposal between QTMB and RACQ, with the result that QTMB will become a subsidiary of RACQ.

[15] Fifth, to facilitate the scheme, QTMB will:

(a) conduct a ballot (which I will refer to as "the Members' Ballot") through which QTMB members will vote to approve the merger of RACQ and QTMB pursuant to

the process set out in Appendix 5 of the QTMB constitution. I will refer to this resolution as "the Members' Ballot Resolution"; and

(b) if the Members' Ballot Resolution is passed, hold a special general meeting immediately prior to the court ordered meeting at which QTMB members will vote to approve changes to the QTMB Constitution, including the ability to transfer QTMB shares under the scheme and the ability of non-members to join the QTMB board. I will refer to this resolution as "the Constitution Resolution".

[16] Sixth, in addition and prior to the implementation of the scheme, the RACQ Board will amend RACQ's by-laws to ensure that QTMB banking products are eligible RACQ products. This will allow each QTMB member to become an ordinary voting member of RACQ.

[17] I note also:

(a) The Scheme is subject to the conditions precedent set out in cl 3.1 of the Scheme which are discussed in Mr Whitelaw's affidavit, but, subject to usual court orders and such orders being lodged with ASIC, these need to be satisfied or waived by 8.00am on the morning set for the Second Court Hearing Date so that the scheme will be self-executing upon the making of the Second Court Hearing orders and registration of those orders with ASIC.

(b) RACQ and Club Finance are not members to the Scheme so, as "outsiders" they need to be bound in by contract. As I have mentioned, this is achieved by the deeds poll in favour of Scheme Participants and the Overseas Members. The deeds poll enables Scheme Participants and the Overseas Members to enforce directly the obligation to provide the Scheme Consideration. Under the deeds poll, QTMB and its directors and secretaries are appointed as the agents of the members to enforce the deeds poll against RACQ and Club Finance. Moreover, under the Scheme, the obligation to transfer the shares held by the members is subject to the provision of the Scheme Consideration as set out in cl 6.1. Together, these provisions address the performance risk, which case law suggests is an important consideration on applications such as the one before me.

(c) Clause 6.1 obliges Club Finance to provide the Scheme Consideration. Clause 6.2 of the Scheme provides for the transfer of the Legacy Shares after provision of the Scheme under cl 6.1 for Scheme Participants other than Overseas Holders. The position of Overseas Holders is dealt with in cl 6.3 which provides for the Legacy Payment and benefits conferred by the Deed Poll – Overseas Members for Overseas Holders.

[18] It will be observed that there is differential treatment as between Overseas Holders and QTMB members other than Overseas Holders. Differential treatment in such circumstances is not uncommon and is usually a reflection of the fact that allowance must be made for the fact that the law of the jurisdiction in which such members reside may affect whether or not it is lawful for someone foreign to that jurisdiction to make a share issue to them. The scheme document in this case records that the purpose of differential treatment is because issuing a share to a person in some overseas countries may involve compliance with laws relating to securities in those countries, and the number of overseas QTMB members does not justify the significant cost and risk involved in complying with those laws. Grant Samuel & Associates Pty Ltd, the independent expert appointed by QTMB's Board to assess the proposed merger has explained that under the scheme:

(a) QTMB members other than Overseas Holders obtain a Legacy Share as their consideration for the implementation of the Scheme;

(b) a Legacy Share is a redeemable preference share in Club Finance which gives a preferred right to a $10 redemption amount per Legacy Share and a right to a "Preserved Surplus Amount" in the event of certain trigger events, namely the disposal of QTMB or a substantial part of its business, insolvency or winding up of QTMB or Club Finance or demutualisation of RACQ;

(c) the Preserved Surplus Amount is the equity attributable to QTMB members as at 30 June 2016 divided by the number of issued QTMB shares on the date of Scheme implementation;

(d) Overseas Holders do not obtain Legacy Shares but they get the $10 per share payment on Scheme implementation and contractual rights which are similar to the rights which holders of Legacy Shares have.

[19] QTMB members have voted in favour of the Members' Ballot Resolution. Of the membership of 68,234 members, 38.7% voted, and of the votes cast, 90.45% were in favour. In compliance with a requirement of the QTMB Constitution so to do, much of the information contained in the Scheme Booklet had already been provided to the members prior to the Members' Ballot Resolution. The effect of the Scheme Booklet is to supplement and to update the disclosures which have already been made in that way.

[20] QTMB directors have unanimously recommended that, in the absence of a superior proposal, QTMB members vote in favour of the Merger (including the Scheme) at the proposed Scheme Meeting. I note that the evidence reveals that no superior proposal has yet emerged.

[21] Finally, I note that the independent expert has concluded that, in the absence of a superior proposal, the Merger (including the Scheme) is in the best interests of QTMB members and the benefits being provided to them are reasonable, having regard to any loss of rights and change as to voting rights and rights to participate in the reserves and profits of QTMB. The full report of the independent expert has been provided to QTMB members before the Members' Ballot Resolution and the provision of the Scheme Booklet will have the result that a supplemental report from the independent expert is also provided to them prior to any meeting.

[22] It remains then for the QTMB members:

(a) to consider, prior to the meeting which I am asked to convene, the Constitution Resolution; and

(b) to consider at the meeting which I am asked to convene, whether to approve the proposal.

[23] Against that background, I turn to consider the key issues to which I have earlier referred.

Whether the applicant is a part 5.1 body and what is proposed is to be regarded as a compromise or arrangement within the meaning of that term in s 411

[24] The requirements that the application must be a part 5.1 body and that the proposal must fall within the definition of "compromise or arrangement" are not controversial. The applicant is plainly a part 5.1 body and the arrangement falls within the law's conception of the terms to which I have referred.

Whether the arrangement is with the applicant's members or any class of them

[25] The scheme has been framed on the basis that it is between QTMB and its members as a single class. Sometimes in cases like this, a question arises as to whether that is appropriate or whether there should be other classes. The applicant has submitted that it is appropriate there be a single class, and that conclusion is not affected by the existence of Overseas Holders.

[26] I agree.

[27] I have already identified that the terms of the MIA in the Scheme Booklet treat Overseas Holders differently to other members and explained why that is so. I propose to take the approach which I have previously taken in *Re Queensland Professional Credit Union Limited (No 1)*, namely to follow the judgment of Barrett J in *Re Hills Motorway Ltd* (2002) 43 ACSR 101; [2002] NSWSC 897 at 9 to 13.

[28] In this case, the differential treatment of the Overseas Holders does not provide any reason to conclude that the test provided by Barrett J in *Re Hills Motorway Ltd* has not been met. There is no ground for requiring separate meetings. I conclude that the arrangement is between QTMB and its members.

Whether there has been appropriate disclosure in the explanatory statement and the statement contains the prescribed information

Relevant legal principle

[29] As to the former consideration, s 411(3) and 412(1) operate so that the draft explanatory statement must explain the effect of the scheme and provide such information as is material to the making of a decision by a member whether or not to agree to the scheme, being information within the knowledge of the directors.

[30] The authorities indicate that the approach I should take is that I must be satisfied, at least at a prima facie level, that there has been proper disclosure with nothing misleading in any material sense: see observations made by Santow J in *Re NRMA Ltd (No 1)* (2000) 156 FLR 349 at 351.

[31] In *Re Crusader Ltd* [1996] 1 Qd R 117, Thomas J said at 125 ([31] to [32]) that "the courts are concerned with the notion of a fair picture being presented" and went on to embrace the observations of the Full Federal Court in *Fraser v NRMA Holdings Ltd* (1995) 55 FCR 452 at 468:

> If every possible formulation of the commercial objective of the proposal, and arguments for and against every theoretical possibility, were set forth the total package of information to members would be likely to confuse rather than illuminate the issue for decision, even for people having familiarity with corporate law and commerce. The need to make full and fair disclosure must be tempered by the need to present a document that is intelligible to reasonable members of the class to whom it is directed and is likely to assist rather than confuse.

[32] The applicant submitted to me that, in summary, the adequacy of the information provided is to be assessed in a practical, realistic way, having regard to the complexity of the proposal. I accept that submission.

[33] The Court is assisted in assessing this question, and also in assessing the more general question dealt with under the next heading, by the existence of and compliance with the onerous duty on applicants to draw to the Court's attention all matters that could be

considered relevant to the Court's exercise of discretion, including matters which might be problematic for the applicant.

[34] The duty and its significance was explained by Barrett J in an oft-cited passage in *Re Permanent Trustee Company Ltd* (2002) 43 ACSR 601 at [7]:

> In a technical sense the application proceeds ex parte, which is a common enough occurrence in cases of this kind. The fact that the application is ex parte is not without some significance. The absence of any defendant or contradictor sharpens the duty of the applicant. While a case such as the present is distinguishable from one where an interlocutory injunction is sought in the absence of the defendant (in that there is *here* no defendant as such) I think it is fair to say that an applicant in this kind of situation, like an applicant ex parte for an injunction, carries the responsibility of bringing to the Court's attention all matters that could be considered relevant to the exercise of its discretion. The principles do not need elaboration. It is sufficient to refer to the judgment of Isaacs J in *Thomas A Edison Ltd v Bullock* (1912) 15 CLR 679. I am entitled to be confident that all relevant material is before the court.

Consideration

[35] Senior Counsel on behalf of the applicant has not drawn my attention to the existence of any particular issues of concern in relation to the question of the adequacy of disclosure and compliance with prescribed requirements.

[36] The applicant has received the usual letter from ASIC communicating that ASIC does not propose to appear at the first court hearing. This letter provides some evidence that ASIC holds the view that proper disclosure of material information has been provided.

[37] I am satisfied that there has been proper disclosure in the respects which are material and that there is no reason to think that the explanatory statement does not contain the prescribed information.

Whether there is any apparent reason why the scheme should not in due course, receive the court's approval if the necessary majority of votes is achieved by the meeting convened by the court order

Relevant legal principle

[38] The formulation by Street CJ in *FT Eastment & Sons Pty Ltd v Metal Roof Decking Suppliers Pty Ltd* (1977) 3 ACLR 69 at 72 which articulates the test in the general way has been consistently followed, namely:

> The court will not ordinarily summon a meeting unless the scheme is of such a nature and cast in such terms that, if it receives the statutory majority at the meeting, the court would be likely to approve it on the hearing of a petition which is unopposed.

[39] It is appropriate to note four other matters.

[40] First, the applicant's duty to bring to the court's attention all matters that could be considered relevant to the exercise of the discretion to which I have earlier referred is also significant here.

[41] Second, I am not required to conduct an extensive examination of fairness or reasonableness of the scheme or to speculate as to the prospect that shareholders might approve the scheme at the scheme meeting: see *Re Macquarie Private Capital A Ltd* (2008) 26 ACLC 366 at [26] to [27]. The question is, as Santow J put it, whether the:

> …scheme will, if an when approved by members, be likely then to be approved by the court, as being "so far fair and reasonable as an intelligent and honest man" may approve. It is not for the court otherwise to be concerned with the merits of the proposal or to inhibit consideration by members so that they can form their own judgment whether to vote for or against.

[42] Third, the first court hearing is nevertheless significant because, in practice, it is at this stage that the Court will intervene if it has any concerns. That the Court has approved the convening of meetings will be regarded by interested persons at the meetings and in the market as giving the assurance that "the scheme is, at least in form and substance such as warranted receiving such preliminary court clearance": see per Santow J in *Re Archaean Gold NL* (1997) 23 ACSR 143 at 147. This is so despite the disclaimer in the Scheme Booklet which appropriately and correctly discloses that the fact of the Court having convened the meeting, does not mean that the Court has formed any view as to the merits of the proposed scheme or that the Court is responsible for the content of the Scheme Booklet.

[43] Finally, although s 411(17) of the Act refers to the Court not approving a scheme unless:

(a) it is satisfied that it has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of Chapter 6; or

(b) there is produced to the Court a statement in writing by ASIC stating that ASIC has no objection to the compromise or arrangement,

the proper approach is not to consider s 411(17) at this stage, but to regard the matters raised by that section as appropriate to be dealt with at the second hearing. In this regard I will take the same result that I took in *Re Queensland Professional Credit Union Ltd (No. 1)*, namely, to follow the approach taken by McMurdo J in *Re Golden Circle Ltd* [2008] QSC 298.

Specific matters which need to be considered

[44] In compliance with is duty of disclosure, the applicant has drawn a number of matters to my attention as relevant to the proper exercise of my discretion.

Preliminary vote by QTMB members

[45] QTMB's constitution provides that where a specified type of proposed transaction defined in Appendix 5 of the Constitution is proposed (and I interpolate the present transaction is one of them) there must first be a members' postal ballot which must be approved by a supermajority of 25% of members voting and 75% of those voting approving of the proposal going forward.

[46] As I have already mentioned, this process has been undertaken and the requisite supermajority of QTMB members has approved the Members' Ballot Resolution.

Voting incentives

[47] Because QTMB has over 68,000 members and needed a supermajority to pass the Members' Ballot Resolution, and to encourage member engagement and participation in the Members' Ballot and Special General Meeting and Scheme Meeting voting processes over the extended period since announcement of the proposed merger in April 2016, members who vote, irrespective of whether they vote for or against the proposal, are entered in various prize draws. Thus:

(a) a member who votes in both the Member Ballot and on the resolutions at the Special General Meeting and the Scheme Meeting is entered into a draw to win a $15,000 RACQ travel voucher, paid for by RACQ;

(b) a member who voted in the Member Ballot was entered into a weekly draw during the ballot period to win a $500 gift card, paid for by RACQ; and

(c) a member who lodges a proxy vote on the resolutions at the Special General Meeting and Scheme Meeting will be entered into a weekly draw to win a $500 gift card, paid for by RACQ.

[48] To further encourage member engagement and participation, for every vote cast in the Member Ballot and the resolutions at the Special General Meeting and the Scheme Meeting, RACQ is donating $1.00 (up to a cap of $50,000) to the 2017 Premier's Reading Challenge, an annual Queensland state-wide initiative for state and non-state schools and home-educated students up to Year 9, as well as children (aged up to 5 years) enrolled in an early childhood centre, and individual home readers.

[49] To my mind, there is nothing in the fact that these measures were taken which adversely affects the exercise of my discretion.

Deal protection clauses

[50] Under the MIA, QTMB has agreed in cl 10 to certain exclusivity arrangements which restrict QTMB from soliciting alternative proposals or competing transactions with third parties, and in responding to approaches by third parties. The arrangements are disclosed and summarised in sections 3.7 and 7.11 of the Scheme Booklet. I observe:

(a) like the reimbursement amount to which I will shortly turn, the clauses were agreed upon following arms-length commercial negotiations;

(b) the directors think that the arrangements do not operate against the interests of QTMB members; and

(c) there is a fiduciary carve-out which operates so that the arrangements do not apply with respect to a bona fide competing transaction which, if not responded to, would be reasonably likely to constitute a breach of the directors' fiduciary or statutory obligations.

[51] In cl 11 of the MIA, QTMB has agreed to pay a reimbursement amount if the Scheme does not proceed in the circumstances contemplated in cl 11.2. The reimbursement amount is $1.5 million, which is approximately 1% of the total equity of QTMB as at 30 June 2016. I observe:

(a) like the exclusivity arrangements to which I have just referred, the clauses were agreed upon following arms-length commercial negotiations when each side was represented by experienced lawyers;

(b) the directors think that the form of agreement is acceptable;

(c) the amount was arrived at by consideration of a reasonable estimate of costs likely to be incurred by RACQ in the transaction;

(d) the reimbursement amount is functionally within the Takeover Panel Guidelines;

(e) the reimbursement amount is not payable simply upon members voting down the proposal; and

(f) there is an equivalent provision which obliges RACQ to pay QTMB in the event that RACQ does not proceed the details of which are set out in cl 11.3 and which involves a payment in similar amount.

[52] Bearing in mind the considerations referred to by Lindgren J in *Re APN News and Media Ltd* (2007) 62 ACSR 400 and *Re Bolnisi Gold NL (No 2)* (2007) 165 FCR 45, I conclude that there

is nothing in the fact that these measures were taken which adversely affects the exercise of my discretion.

Proposed electronic notification of members who have elected to receive notices by email

[53] QTMB proposes to email those members who have elected to receive notices by email with links to or a copy of the Scheme Booklet and otherwise to send members the relevant material by ordinary prepaid post.

[54] There are a number of cases in which courts have permitted scheme booklets, notices of meeting and proxy forms to be dispatched by electronic notification.

[55] The proposal is unremarkable and needs no further comment.

The Members deemed warranty

[56] Clause 5.6 of the Scheme provides for a "deemed warranty" by members concerning the title to their shares. I discussed the purpose of such a provision in *Re Queensland Professional Credit Union Ltd (No. 1)*. As I did in that case, I propose to follow the approach taken by Lindgren J in *Re APN News and Media Ltd* and to conclude that the warranty mechanism is not a point of concern.

Conclusion

[57] Having regard to the following considerations:

(a) all the directors of the applicant are also of the view that the Scheme is in the best interests of the members and recommended the members support the Scheme;

(b) the independent expert has expressed the view to which I have earlier referred;

(c) no competing offers have emerged;

(d) the discussion I have made as to the approach which I should take to this question,

I do form the view that if the Scheme achieves the statutory majority at the meeting of the members, I would be likely to approve it on the hearing of the subsequent application.

Whether appropriate notice of the application has been given to ASIC

[58] I must be satisfied that 14 days' notice of the hearing of the application has been given to ASIC (s 411(2)(a)), or else I must permit a lesser period of notice being given to ASIC (s 411(2)(a)).

[59] I must also be satisfied that ASIC has had a reasonable opportunity to examine the terms of the proposed arrangement and draft explanatory statement and to make submissions to the court (s 411(2)(b)).

[60] My attention has been drawn to evidence which satisfies the requirement of proof that appropriate notice has been given to ASIC and which permits me to find, as I do, that the requirements of s 411(2)(a) have been satisfied.

[61] The evidence also proves that the applicant has received the usual letter from ASIC advising that:

(a) ASIC has received, had a reasonable opportunity to examine, and in fact examined the terms of the scheme and the draft explanatory statement; and

(b) ASIC does not propose to appear at the first court hearing or to intervene to oppose the scheme at that hearing.

[62] This letter permits me to find, as I do, that the requirements of s 411(2)(b) have been satisfied.

Conclusion

[63] A form of order has been provided to me which provides for convening the meetings and approving the explanatory statement. I am satisfied that I ought to make an order in the form which has been provided to me, save that I amend the time on which the second hearing will take place, as identified in annexure A to the order. It will take place at 9.00am rather than 10.00am.

[64] Accordingly I will make an order in terms of the draft which has been provided to me subject to amending the time of the second hearing date in the annexure to that order. I have signed the draft order and I will place it with the papers.