

Snapshot: management meetings confirmed as being integral in section 238 proceedings

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The Grand Court of the Cayman Islands has again emphasised the central role that experts play in section 238 proceedings and that it is integral to the process to allow them to meet with management to gather information that they consider to be relevant. In a recent decision in *eHi Car Services Limited*, Justice Parker ordered the Company to convene a management meeting at the request of the Dissenters' expert, despite the Company's protestations that it was not reasonable, proportionate or necessary to do so.

The Company had already unsuccessfully challenged the Court's jurisdiction to order management meetings^[1] at a previous hearing. Despite this, when the Dissenters' expert requested that such a meeting be convened, the Company refused to do so unless the Dissenters' expert provided a list of questions for it to consider, ahead of the time required by a previous directions order for the expert to do so. The Company contended that, in the absence of any evidence from the Dissenters' expert as to why a management meeting was required, it was not necessary to arrange the meeting. In response, the Dissenters argued that the Company was making unreasonable demands upon the Dissenters' expert and was attempting to put up roadblocks to avoid holding a management meeting.

Justice Parker ruled that there was no reason in principle to dispense with a management meeting, which is a tried and tested procedural step for achieving a fair outcome in section 238 proceedings and is central to determining the fair value of the Dissenters' shares. He repeated that the experts who are engaged to assist the Court enjoy a degree of autonomy as professional practitioners and that the Court will rely on them to assess what information is relevant for their purposes and what procedure might assist them in obtaining and interrogating information most efficiently. With this in mind, the Court reiterated that the practice of convening management meetings is an integral part of the information exchange process – echoing the Chief Justice's earlier finding that such meetings are "crucial".^[2]

Justice Parker warned that, although litigation is hard fought, this is not an excuse for ignoring

court orders and where there is an impasse on questions of sufficient importance (such as the Company's refusal to convene a management meeting), the proper course is to apply to the Court for further directions.

This decision reinforces the importance of the Company cooperating with requests from experts in section 238 proceedings, which are essential in correcting the imbalance of information between the Company and the Dissenters and, as Justice Parker noted, are already subject to reasonable safeguards. In particular, when an expert asks to meet with management, the Company is obliged to facilitate this, rather than second-guessing whether or not such a request is necessary or justified.

Ogier act for a group of dissenting shareholders in this matter.

[1] Standard directions in section 238 appraisal proceedings confirmed in the Cayman Islands

[2] Chief Justice confirms and expands upon the 'standard directions' in section 238 proceedings

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