

IN THE COURT OF FIRST INSTANCE
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

28 January 2025

CASE No: AIFC-C/CFI/2024/0043

PROPERTY B11 Ltd.

Claimant

v

ESIL INVEST LIMITED LIABILITY PARTNERSHIP

Defendant

JUDGMENT AND ORDER

Justice of the Court:
Justice Tom Montagu-Smith KC



ORDER

UPON the Claimant's claim for an order sanctioning a proposed arrangement ("the Arrangement") for the reconstruction of the Claimant and the Defendant by their amalgamation pursuant to an agreement on amalgamation dated 12 September 2024 ("the Agreement").

IT IS ORDERED THAT:

1. The Arrangement is sanctioned by the Court pursuant to section 124 of the AIFC Companies Regulations.
2. Pursuant to section 126 of the AIFC Companies Regulations, the Claimant and the Defendant shall be amalgamated on the terms set out in the Agreement.

JUDGMENT

1. By this claim, the Claimant seeks orders sanctioning and ordering the amalgamation of the Claimant and the Defendant.
2. The Claimant is a company incorporated under AIFC law. The Defendant is a limited liability partnership established under Kazakhstan (non-AIFC) law. The business of both companies is said to be the rental and operation of property.
3. On 12 September 2024, the Claimant and the Defendant entered into an agreement (“*the Agreement*”) for the amalgamation of the parties into a single AIFC company. The proposed effect of the Agreement is to transfer all of the assets and liabilities of the Defendant into the Claimant. I note from the terms of the Agreement that the Claimant currently has no assets. The proposal is therefore in effect for the conversion of the Defendant into an AIFC company.
4. BI Property Limited Liability Partnership is the sole shareholder of both parties. On 12 September 2024, it issued a special shareholder resolution in respect of each party, approving the Agreement and the proposed amalgamation.
5. On 17 September 2024, the proposed amalgamation was advertised in Yuridicheskaya Gazeta. On the same day, notices were sent to each of the creditors of the Defendant, notifying them of the proposed amalgamation. According to the Claimant, no objections have been received from any of them.
6. I have been provided with balance sheet statements for each party. The Claimant has no assets or liabilities. On the face of it, the Defendant’s assets significantly exceed its liabilities.
7. Article 124 of the Companies Regulations applies where an arrangement is proposed between a company and its shareholders. Pursuant to Article 124(3), the Court may sanction a compromise or arrangement if a majority representing three quarters of all of its shareholders agree. That condition is satisfied in this case.
8. By Article 124(2), the Court may order a meeting of shareholders. In this case, there is no need for such a meeting because the sole shareholder of each company has already issued a resolution.
9. By the same provision, the Court may also order a meeting of creditors, with notice being given under Article 125 explaining the proposed arrangement and how it would affect the creditors’ rights. In the present case, this also appears to me to be unnecessary as all of the creditors have had notice of the arrangement and none has registered any objection. It does not appear to me that their rights would be prejudiced as all of the Defendant’s assets and liabilities will be transferred to the Claimant.
10. In the circumstances set out above, the proposed arrangement appears to me to be appropriate and I sanction it.
11. By Article 126 of the Companies Regulations, the Court may make orders to facilitate the proposed arrangement. The Claimant seeks an order for the amalgamation of the parties, which I so order.

By Order of the Court,

Justice Tom Montagu-Smith KC,
Justice, AIFC Court

Representation:

The Claimant and the Defendant were represented by Mr Nurlybek Sultan Nusipzhanov, Associate, Grata Law Firm LLP, Astana, Republic of Kazakhstan.