

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

10 March 2022

CASE No: AIFC-C/CFI/2021/0012

UNICORN CROPS LIMITED PRIVATE COMPANY

Applicant

v

- (1) KIALY AGRO-10 LIMITED LIABILITY PARTNERSHIP
- (2) NOVOKUBANSKOYE LIMITED LIABILITY PARTNERSHIP
- (3) SENIM ZHER LIMITED LIABILITY PARTNERSHIP
- (4) ARKA ZERENDI LIMITED LIABILITY PARTNERSHIP
- (5) KAMAGRO LIMITED LIABILITY PARTNERSHIP

Respondents

JUDGMENT AND ORDER

Justice of the Court:

Justice Andrew Spink QC

ORDER

1. The Court directs pursuant to Regulations 27(2)(a) and/or 27(6) of the AIFC Court Regulations 2017 and/or Rule 1.7 of the AIFC Court Rules 2018 that for all purposes related to and/or consequential in this Order and Judgment:
 - (a) the Claim/Application Form in Case Number AIFC-C/CFI/2021/0012 (“the Claim Form”) issued on 20 December 2021 shall be deemed to be a Claim Form issued under the “Abridged Procedure for Claims” set out in Part 23 of the AIFC Court Rules 2017 and, to the extent necessary, shall also stand as any application notice required for the purposes of making the application sought in the Claim Form;
 - (b) the parties named as “Claimant 2”, “Claimant 3”, “Claimant 4”, “Claimant 5” and “Claimant 6” in the Claim Form shall be deemed to be the Defendants to the claim brought by and the Respondents to the application made in the Claim Form (and to have each been properly served with the Claim Form for both the bringing of the claim and, to the extent necessary, the making of the application); and
 - (c) the party named as “Claimant 1” in the Claim Form shall be deemed to be the Claimant to that claim and the Applicant to that application.
2. The Court sanctions under section 124 of the AIFC Companies Regulations 2017 the proposed arrangement for a reconstruction involving the amalgamation of the Applicant with each of the Respondents.
3. Pursuant to section 126 of the AIFC Companies Regulations 2017 the Court orders that each of the Respondents be amalgamated with the Applicant on the basis set out in the five Amalgamation Agreements between the Applicant and each of the Respondents each of which is dated 23 August 2021.

JUDGMENT

Introduction

1. By an application filed in Case Number AIFC-C/CFI/2021/0012 by Claim/Application Form dated 20 December 2021 (“**the Claim Form**”), the parties referred to in the Claim Form as (1) “Claimant 1”, identified there as “Unicorn Crops Limited Private Company” and by Business Identification Number (“BIN”) 190940900125 (“**the Company**”), (2) “Claimant 2”, identified there as “Kialy Agro-10 Limited Liability Partnership” and by BIN 020240004012 (“**LLP 1**”), (3) “Claimant 3” identified there as “Novokubanskoye Limited Liability Partnership” and by BIN 000240002964 (“**LLP 2**”), (4) “Claimant 4” identified there as “Senim Zher Limited Liability Partnership” and by BIN 990540004311 (“**LLP 3**”), (5) “Claimant 5” identified there as “Arka Zerendi Limited Liability Partnership” and by BIN 011040005490 (“**LLP 4**”) (also referred to in the documentation referred to in the Claim Form as “Arka Zerendi Limited Liability Partnership”), and (6) “Claimant 6” identified there as “Kamagro Limited Liability Partnership” and by BIN 011040005578 (“**LLP 5**”) jointly seek:
 - (a) an order under section 124 of the AIFC Companies Regulations 2017 (“**the AIFC Companies Regulations**”) sanctioning an arrangement proposed between the Company and its 100% shareholder, Unicorn Holdings Limited (BIN 190940900125) (“**the Shareholder**”) for a reconstruction involving the amalgamation of each of LLP 1, LLP 2, LLP 3, LLP 4 and LLP 5 with the Company; and
 - (b) an order under section 126 of the AIFC Companies Regulations giving effect to the amalgamation of each of LLP 1, LLP 2, LLP 3, LLP 4 and LLP 5 with the Company (although section 126 is not expressly referred to in the application, this is the appropriate section of the AIFC Companies Regulations for the order sought in sub-paragraph (b) herein and I proceed on that basis).

Procedural matters

2. It is necessary for me to deal first with a preliminary procedural matter.
3. On its face, there is no Defendant to the claim brought by or Respondent to the application made in the Claim Form. In addition, it is not clear whether the Claim Form is intended to stand as a claim form issued pursuant to Part 4 of the AIFC Court Rules 2018 (“**the AIFC Court Rules**”) (which sets out the general rules for commencing claims), alternatively pursuant to Part 23 of the AIFC Court Rules (which sets out the “**Abridged Procedure for Claims**”). The relevance of this is highlighted by Rules 6.1 and 6.2 of the AIFC Court Rules, which provide as follows in relation to the bringing of any application:

“6.1 When a party makes an application to the Court:

(1) before a claim is brought in accordance with Part 4, he shall issue and serve an Abridged Procedure Claim Form under Part 23 of the Rules, unless the Court orders otherwise;

(2) after a claim is brought in accordance with Part 4, he shall file and serve an application notice subject to the rules of this Part.

6.2 In this Part:

(1) ‘application notice’ means a document in which the applicant states his intention to seek a Court order; and

(2) ‘respondent’ means:

(a) the person against whom the order is sought; and

(b) such other person as the Court may direct.”

4. If the Claim Form were to be treated by the Court as a claim form issued under Part 4 of the AIFC Court Rules not only would there have to be a defendant, who would have to be served, but various procedural steps would thereafter have to be followed following service of the Claim Form on the defendant, as set out in Part 4, including service of Particulars of Claim and a Defence in accordance with Part 11, none of which would be appropriate or necessary in a claim such as this. This claim, in which the only relief sought is an order on the single application brought under Sections 124 and 126 of the AIFC Company Regulations and which is unlikely to involve a substantial dispute of fact is much better suited to the “Abridged Procedure for Claims” set out in Part 23 of the AIFC Court Rules (see Rule 23.1(1)).
5. Were the Claim Form to be treated by the Court as one issued under Part 23, however, this would have the knock-on effect of engaging Rule 6.1(1) in relation to the making of an application, whereby it seems tolerably clear that no separate application notice is required if the necessary application is made in the Part 23 Claim Form (whereas a separate application notice would certainly be required if the proceedings had been commenced by a Part 4 claim form: see Rule 6.1(2)).
6. Furthermore, where the Part 23 “Abridged Procedure for Claims” is used, no Defence needs to be filed (see Rule 23.4(1)(a)).
7. Significantly, there is also provision in Rule 23.6 for a Practice Direction to be made setting out circumstances in which an “Abridged Procedure Claim Form” may be issued without naming a defendant. Although no such Practice Direction has yet been made, this confirms that, in accordance with the Overriding Objective set out in Rule 1.6 of the AIFC Court Rules, the policy underlying Rule 23.6 is to promote expeditious and efficient disposal of matters suitable for the Part 23 “Abridged Procedure for Claims” even, potentially, to the extent of disposing with the need for a Defendant altogether.
8. Absent a Practice Direction to that effect, I do not consider that the Court can proceed without a Defendant in this matter in the way contemplated specifically by Rule 23.6. However, having regard to the evident underlying policy to which I have referred, it does seem to me (and I conclude) that it is open

to the Court in the exercise of its relevant management powers to direct in an appropriate case that one or more of the “Claimants” named in the Claim Form be deemed to be the Defendant or Defendants to the claim brought and (to the extent necessary) the Respondent or Respondents to the application made by the Claim Form.

9. Those case management powers are to be found in Regulations 27(2)(a) (“(2) The Court may: (a) make orders in matters over which it has jurisdiction to make any orders it considers appropriate, including in relation to the management of cases, interim orders, and enforcement;”) and/or 27(6) (“(6) The Court may waive any procedural requirements if it is satisfied that it is in accordance with the overriding objective to do so”) of the AIFC Court Regulations as underpinned by Rules 1.7 and 1.8 of the AIFC Court Rules.
10. In my view, this is an appropriate case in which to take this approach because, as stated above in paragraph 5 of this Judgment, in bringing the application made in the Claim Form as five of the “Claimants”, each of LLP 1, LLP 2, LLP 3, LLP 4 and LLP 5 can be deemed, at least as a matter of substance, to have indicated its consent to the application being made and disposed of in the manner sought in the Claim Form and, I would add, to the Court taking all necessary steps within its powers to facilitate that outcome. Consequently, it seems to me that no prejudice is caused – and the Overriding Objective is promoted - by making an order that puts that substantive intention into the proper procedural form. Accordingly, I propose to make the direction set out in paragraph 1 of the Order.
11. For the avoidance of doubt, paragraph 1(a) is included in the Order because Rule 23.5(1) of the AIFC Court Rules requires a Part 23 Claim Form to state that the claim is brought under the “Abridged Procedure for Claims”. The Claim Form does not state this and so an order directing that it should nonetheless stand as a Part 23 Claim Form is required.
12. The consequence of paragraph 1(c) of the Order will be that it will be for the Company (as the deemed Claimant/Applicant) to take the follow-up steps required to be taken under Section 125(5) of the AIFC Companies Regulations.

The substantive application under Sections 124 and 126 of the AIFC Companies Regulations

13. I now turn to the substantive application for relief under Sections 124 and 126 of the AIFC Companies Regulations.
14. The Company is a Private Company incorporated in the Astana International Financial Centre (Document 1) and is a “Company” within the meaning of the AIFC Companies Regulations (see the definitions in paragraph 4 of schedule 1 to those Regulations). The Shareholder is also an AIFC incorporated Private

Company and is the sole shareholder in the Company (Document 2 and Claim Form Details of Claim/Application paragraph 2). The Company in turn holds the following percentage of the shares in the charter capital of each of the LLPs: LLP 1 - 99%; LLP 2 - 99%; LLP 3 – 99.09%; LLP 4 – 98.977%; LLP 5 - 99% (Documents 6, 5, 4, 8 and 7 respectively), each of which is a limited liability partnership registered under the legislation of the Republic of Kazakhstan (Document 3).

15. As outlined above and pursuant to paragraph 1 of the Court’s order, the Company is the deemed Claimant to the claim brought by the Claim Form and the deemed Applicant to the application for orders under Section 124 and 126 of the AIFC Companies Regulations. Each of the five LLPs is a deemed Defendant/Respondent. The application is not opposed.
16. It is stated in the Claim Form Details of Claim/Application, supported by a statement of truth signed by the Company’s authorised legal representative, Shynggys Beibituly Oralbayev, a Senior Associate of Grata Law Firm LLP, that the Shareholder and the Company have made an arrangement for the amalgamation of the LLPs with the Company (paragraph 3) and that the Shareholder has resolved that the LLPs should amalgamate with the Company (paragraph 6), the Company has resolved to amalgamate with the LLPs (paragraph 7) and that the participants in each of the LLPs, in each of which the Company is the majority shareholder, have resolved to amalgamate with the Company, to approve and conclude the relevant Agreement on Amalgamation applicable to each LLP, to notify their creditors of their amalgamation with the Company and to register the termination of their LLP activity upon amalgamation with the Company (paragraph 8).
17. It is also stated in the Claim Form Details of Claim/Application (paragraph 10) that the individual participants in the LLPs, who number in excess of 1,200 will receive between them, as part of the amalgamation process, a total of 3,000 “preferred shares of Class B” in the Company each of which share will have a nominal value of 600 USD.
18. Although this is not a matter addressed expressly in the Claim Form Details of Claim/Application, it is to be noted:
 - (a) that, while Section 124(2) of the AIFC Companies Regulations empowers the Court to order a meeting of the shareholders of the Company, no such order is required in this case because the sole shareholder has already approved the proposed procedure, as indicated above;
 - (b) further, that the requirement under Section 124(3) that a majority representing three-quarters of the votes of the shareholders of the Company present and voting at the shareholders’ meeting has been met.
19. Documents filed in support of the application include:

- (a) the Company's standard Articles of Association (Document 1);
 - (b) the resolution of the shareholders of the Shareholder confirming, amongst other matters, the Shareholder's decision to amalgamate the LLPs with the Company, to approve each of the five Agreements on Amalgamation on behalf of the Company and to notify the Company's creditors about the amalgamation (Document 2);
 - (c) the resolution of the Shareholder on behalf of the Company in like terms to the resolution referred to in paragraph 20(b) above (Document 3);
 - (d) minutes of the Extraordinary General Meetings of the participants in each of the LLPs each held on 23 August 2021 approving the resolutions summarised in paragraph 17 above (Documents 4 to 8);
 - (e) notifications to the creditors of each of the LLPs about the amalgamation (Documents 9 to 99);
 - (f) the five Agreements on Amalgamation between the Company and each of the LLPs, dated 23 August 2021 (Documents 100 to 104).
20. Each of the Agreements on Amalgamation dated 23 August 2021 describes an agreement between the relevant LLP and the Company to undertake a "reorganisation process" involving the amalgamation of the LLP with the Company with a transfer of all the LLP's rights and obligations to the Company, such that the Company will become the legal successor of the relevant LLP to all the obligations of the LLP (Clause 6.1) after which each LLP will be excluded from the National Register of Business Identification Numbers of the Republic of Kazakhstan (Clause 6.2). Each Agreement on Amalgamation also contains a summary of the basic financial data set out in the balance sheets of the Company and the relevant LLP (Clauses 3.1 and 3.2). Such basic financial data relating to the Company and all of the five LLPs is also set out in each of the notifications to creditors referred to in paragraph 19(e) above.
21. I am satisfied that Section 124 of the AIFC Companies Regulations applies in this case, in that the matters summarised above constitute an arrangement proposed between the Company and its 100% shareholder, Unicorn Holdings Limited (Section 124(1)(b)).
22. There is no application for the Court to order that a meeting of shareholders be held to vote on the proposal (Section 124(2)), and I take the view that no such order is needed, since the information provided to the Court is that a meeting has already been held at which the Shareholder (being the sole shareholder in the Company) has already passed a resolution in favour of the proposal (Documents 2 and 3).

23. The Court has not been informed of any objection to the proposal. Moreover the proposal appears adequately to protect the position of third parties by the transfer of all obligations of the LLP to the Company in circumstances where (a) all those creditors in respect of whom information has been provided to the Court have been notified of the transfer by each LLP to the Company of that LLP's respective liabilities owed to each of those creditors, (b) each of those creditors has been notified of the basic financial data on the balance sheets of the Company and all of the LLPs, (c) the Court has not been informed of any objection having been received from any creditors, and (d) the Company and each of the LLPs consent to the proposal, and in particular to the transfer of all of each LLP's obligations to the Company, the Company and the relevant LLP having disclosed to each other in the Agreement on Amalgamation basic financial data from each of their respective balance sheets.
24. In the circumstances I consider it appropriate for the Court to sanction the proposed arrangement by order under Section 124(3) of the AIFC Companies Regulations.
25. Section 126 of the AIFC Companies Regulations provides that if an application is made to the Court under Section 124 for the sanctioning of an arrangement between a Company and its shareholders, *"the Court may make any orders as it considers appropriate to facilitate the ... arrangement, including a reconstruction of the Company, or an amalgamation of the Company with any other Company"*. It provides further that *"in this section Company may be taken to include a Body Corporate incorporated outside the AIFC"*.
26. This raises the question of whether the Court has power to make an order under Section 126 where, as here, some of the entities to be involved in the amalgamation, namely each of the LLPs, is neither a *"Company"* in its primary sense of being a *"Private Company or a Public Company"* incorporated in the AIFC (as per paragraph 4 of Schedule 1 to the AIFC Companies Regulations) nor a *"Body Corporate incorporated outside the AIFC"* because it is a limited liability partnership rather than a body corporate. As to this, I respectfully agree with and adopt the approach to the making of the Section 126 part of the Order taken by Justice Sir Stephen Richards in AIFC Court Case No. AIFC-C/CFI/2021/0002 at [11] in his Judgment, where he said:

*"The amalgamation of the LLP with the Company is at the heart of the proposed arrangement and it is appropriate in my view for the amalgamation to take place to facilitate the arrangement. An amalgamation involving a limited partnership registered outside the AIFC does not fall within the express wording of the section, **but that wording is not exhaustive of the forms of amalgamation that may be ordered** (*"including ... an amalgamation of the Company with any other Company"*). I see no reason of principle why an order should not extend in an appropriate case to the amalgamation*

of a Company with a limited partnership, nor why a limited partnership registered outside the AIFC should be in any worse a position in that respect than a body corporate incorporated outside the AIFC.” (emphasis added)

27. I therefore conclude that the Court should make an order under Section 126 of the AIFC Companies Regulations that the LLPs be amalgamated with the Company on the basis set out in the Amalgamation Agreement between them dated 23 August 2021.
28. For the avoidance of doubt, the orders made by the Court necessarily serve also to confirm acceptance by the Court of jurisdiction to make the orders sought in the application (see paragraph 1 of Section 3 of the Claim Form “Remedy Sought”).

By the Court,

Andrew Spink QC, Justice, AIFC Court