

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

18 May 2022

CASE No: AIFC-C/CFI/2022/0002

CASPIAN RESEARCH GROUP LIMITED

Applicant

v

ASTANA INVEST LLP

Respondent

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 on this Order and Judgment:
 - (a) the Claim/Application Form in Case Number AIFC-C/CFI/2022/0002 (“the Claim Form”) issued on 16 February 2022 shall be deemed to be a Claim Form issued under the ‘Abridged Procedure’ set out in Part 23 of the AIFC Court Rules 2018 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 party named as “Claimant 2” in the Claim Form shall be deemed to be the Defendant to the claim brought by and the Respondent to the application made in the Claim Form (and to have 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 the Respondent.
3. Pursuant to section 126 of the AIFC Companies Regulations 2017 the Court orders that the Respondent be amalgamated with the Applicant on the basis set out in the Amalgamation Agreement between them dated 14 February 2022.

JUDGMENT

Introduction

1. By an application filed in Case Number AIFC-C/CFI/2022/0002 by Claim/Application Form dated 16 February 2022 (“the Claim Form”), the parties referred to in the Claim Form as (1) “Claimant 1”, identified there as “Private Company Caspian Research Group Ltd” and by Business Identification Number (“BIN”) 200840900235 (“the Company”) and (2) “Claimant 2”, identified there as “Astana Invest LLP” (“the LLP”) and (in the documentation accompanying the Claim Form) by BIN 180140042013 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% shareholders, Ussenov Daniyar Bekbergenovich (“the 51% Shareholder”) and Naizabekova Altynkul Tolbyevna (“the 49% Shareholder”) (“the Shareholders”) for a reconstruction involving the amalgamation of the LLP with the Company; and
 - (b) an order under section 126 of the AIFC Companies Regulations giving effect to the amalgamation of the LLP 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 subparagraph (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:

(a) 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;

(b) after a claim is brought in accordance with Part 4, he shall file and serve an application noticesubject 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 of the “Claimants” named in the Claim Form be deemed to be the Defendant to the claim brought and (to the extent necessary) the Respondent 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 in bringing the application made in the Claim Form as one of the “Claimants”, the LLP 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 return 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 5 as listed in the Claim Form and Claim Form paragraph 3) 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 Shareholders are natural persons, who are the “incorporating” and sole shareholders in the Company (Document 2 as listed in the Claim Form and the additional document subsequently submitted to the Court entitled “Protocol, Caspian Research Group 14.02.2022” being minutes of the General Meeting of the participants of the Company on 14 February 2022).
15. The LLP is a legal entity registered outside the AIFC and operating in accordance with the legislation of the Republic of Kazakhstan (Documents 4 and 7 as listed in the Claim Form). The 49% Shareholder is also the sole founder of shareholder of and/or sole participant in the LLP (Document 4 as listed in the Claim Form and the additional document subsequently submitted to the Court entitled “Protocol, Astana

Invest 14.02.2022” being a Resolution of the LLP made by and on behalf of the LLP by the 49% Shareholder on 14 February 2022).

16. 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. The LLP is the deemed Defendant/Respondent. The application is not opposed.
17. It is stated in the Claim Form, supported by a statement of truth signed by the 51% Shareholder who states that they are duly authorised to sign that statement on behalf of the Company and in the documents listed in the Claim Form and/or provided to the Court subsequently (as referred to above and below) that the Shareholders have agreed on behalf of the Company and the 49% Shareholder together with the duly appointed “Head” and “representative” of the LLP, Zhanar Agatayeva Batyrkhanovna, have agreed on behalf of the LLP to the amalgamation of the LLP with the Company (Claim Form paragraphs 1 and 2 and documents referred to above and below).
18. Although this is not a matter addressed expressly in the Claim Form, 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 shareholders have 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 (document entitled “Protocol, Caspian Research Group 14.02.2022” referred to above and below);
 - (c) further that, under the “Agreement on the merger of a private company with a limited liability partnership” dated 14 February 2022 (Document 3 as listed in the Claim Form) (“the Amalgamation Agreement”),
 1. the Company undertook within the period established by law to notify in writing all the creditors of the Company known to it of the decision taken on the reorganization of the Company and LLP; and
 2. the LLP undertook to determine its creditors and debtors and within the period established by law to notify in writing all the creditors of the Company known to it of the decision taken on the reorganization of the Company and LLP.
19. Documents filed in support of the application include:

(a) the various documents already referred to above (together with further documents referred to below), noting that some of these were provided to the Court subsequently to the Claim Form being issued and are therefore not listed in the Claim Form;

(b) Articles of Association for the Company (Document 6 as listed in the Claim Form);

(c) Articles of Association of the LLP (Document 7 as listed in the Claim Form);

(d) a “Statement of Notification of Creditors” supported by a statement of truth signed on behalf of the Company by the 51% shareholder and on behalf of the LLP by Zhanar Agatayeva Batyrkhanovna (provided to the Court subsequent to the Claim Form being issued);

(e) a “Statement on financial position” supported by a statement of truth signed on behalf of the Company by the 51% shareholder and on behalf of the LLP by Zhanar Agatayeva Batyrkhanovna (provided to the Court subsequent to the Claim Form being issued) to which are appended two additional documents namely notes of information on the absence (presence) of debt recorded in state authorities in respect of each of the Company and the LLP as at 13 April 2022 and 12 April 2022 respectively.

20. The Amalgamation Agreement describes an agreement between the LLP and the Company to carry out a reorganization in the form of a merger between the Company and the LLP involving a transfer of property from and all rights and obligations of the LLP to the Company. The Amalgamation Agreement expressly refers at clause 1.3 to the two “protocol” documents referred to above and states that the decisions of the Company and the LLP as recorded in those documents is the basis of the reorganization forming the subject matter of the Amalgamation Agreement.
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% shareholders, Ussenov Daniyar Bekbergenovich (“the 51% Shareholder”) and Naizabekova Altyngul Tolbyevna (“the 49% Shareholder”) (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, for the reason set out in paragraph 18(a) above.
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/contracting counterparties in respect of whom

information has been provided to the Court have been notified of the proposed reorganisation (“Statement of notification of creditors” referred to in paragraph 19(d) above, which also confirms that the LLP had no receivables as at the date of the issuing of the Claim Form and that the financial position of the Company and the LLP are stable), (b) there is no debt in either the Company or the LLP (“Statement on financial position” referred to in paragraph 19(e) above), (c) the Charter capital of the Company post-reorganisation and merger will be equal to the sum of the prior capitals of the Company and the LLP (clause 3.1 of the Amalgamation Agreement), and (d) each of the Company and the LLP consent to the proposed reorganisation, and in particular to the transfer of all the LLP’s obligations to the Company, the Company and the LLP having first fully disclosed to each other all of their respective assets and liabilities as identified in sub-paragraphs 23(a) and (b) herein.

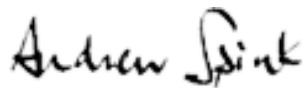
24. In the circumstances I consider it appropriate for the Court to sanction the proposed arrangement by order under Section 124(3) of the AIFC Companies Regulations.
25. Section 126 of the AIFC Companies Regulations provides that if an application is made to the Court under Section 124 for the sanctioning 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, one of the entities to be involved in the amalgamation, namely the LLP, 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 LLP be amalgamated with the Company on the basis set out in the Amalgamation Agreement between them dated 14 February 2022 (Document 3 as listed in the Claim Form).

By the Court,



Andrew Spink QC,
Justice, AIFC Court

