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Neutral Citation Number: [2021] EWHC 967 (Ch)

Case No: CR-2020-003818

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)

Royal Courts of Justice
The Rolls Building
Fetter Lane
London EC4A 1NL

Date: Double-click to add Judgment date

Before :

SIR ALASTAIR NORRIS

- -

IN THE MATTER of WILLIAM HILL PLC
and
IN THE MATTER of THE COMPANIES ACT 2006

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- -

Andrew Thornton QC (instructed by **Slaughter and May**) for **William Hill plc**
Martin Moore QC (instructed by **Linklaters LLP**) for **Caesars UK Holdings Limited** and **Caesars Entertainments Inc**
David Chivers QC and Andrew Blake (instructed by **Travers Smith LLP**) for **HBK Investments LP**

Hearing date: 31 March 2021

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APPROVED JUDGMENT

Sir Alastair Norris:

1. William Hill PLC ("the Company") is a well-established and leading operator of betting shops, gambling companies and online gaming services. It has significant operations in the United States, some of which were conducted under a joint venture agreement with Eldorado Resorts Inc ("Eldorado") entered in September 2018. Eldorado itself merged with another significant operator, Caesars Entertainment Inc ("Caesars") in July 2020. The joint venture arrangement continued, but now with the Company as an 80% partner and Caesars as a 20% partner. This was a period of intense merger and acquisition activity following the liberalisation of the sports betting market in an increasing number of US states in consequence of a decision of the US Supreme Court in May 2018.

2. The Company itself was not immune. Its growing US joint venture business was attractive: and it had an established UK and European bookmaking and gaming business (albeit one facing regulatory headwinds, particularly in relation to fixed-odds betting terminals). Some interest in acquiring the Company was shown by Apollo Management International LLP ("Apollo") in August 2020. But in September 2020 Caesars, the Company's US joint venture partner, offered to acquire the entire share capital of the Company for a cash consideration of 272p per share via a bidco. The market announcement of that bid approach referred to a provision in the joint venture agreement under which Caesars had a right to maintain a list of names (and add to or to substitute names) of potential acquirers of the Company and which gave Caesars the right to terminate the joint venture in the event of an acquisition by a party on the restricted list.

3. The offer did not delight all shareholders. Some felt that Caesars was not offering enough and that the Board should negotiate harder and from a position of strength, presenting an IPO as an alternative to a takeover as a means of realising value.

4. But on 30 September 2021 agreement was reached on the Caesars' offer. The Board unanimously recommended it to the Company's shareholders. First, because the Board considered that some risk attended the exploitation of the US opportunities in an intensely competitive environment and that significant investment was required to maximise those opportunities. Second, because the offer secured a certain cash return to shareholders at a significant premium to the value that was then currently recognised by the market. Third, because Caesars' proposals for the preservation of the non-US business and for its ultimate disposal and for the protection of the interests of the Company's 11,500 employees (including those in the UK) in that context were attractive.

5. On 12 November 2020 Apollo announced that it would not be making a competing offer. Another potential acquirer did not pursue its interest having conducted due diligence.

6. The mechanism to be adopted for the takeover is a familiar transfer scheme of arrangement under Part 26 of the Companies Act 2006. This is the hearing of an application for the Court's sanction to be given to the scheme, in relation to which the approach of the Court is well settled. I will consider each of the issues in turn: almost all are entirely straightforward, and I will deal with them as shortly as circumstances permit. But one does require extensive consideration.

7. First, jurisdiction. The matter was considered at the convening hearing and found to exist; no issues arise. William Hill PLC is plainly "a company" within section 895 of the Companies Act 2006: and it is settled that the proposed transfer is an "arrangement" exhibiting the requisite features of give-and-take (see Re Jelf [2015] EWHC 3857(Ch)).

8. Second, compliance with the statutory conditions and with the terms of convening order of ICC Judge Prentis dated 23 October 2020. The evidence proves that the statutory conditions have been satisfied. The order of Judge Prentis directed the convening of a "hybrid" meeting (both physical and virtual) compliant with the principles identified in Re Columbus Energy [2020] EWHC 2452 (Ch). The meeting was held on 19 November 2020. My function at the sanction hearing is to be satisfied that the arrangements were in fact effective. On the evidence no difficulties were encountered.

9. Third, I must consider the constitution of the meeting. No class questions arise. All scheme shareholders are treated identically. I note that the directors had given irrevocable undertakings in respect of their personal shareholdings to support the scheme. But at the convening hearing (in accordance with conventional analysis) this was not considered to fracture the class: there is no evidence that the undertakings had any material influence upon the outcome of the meeting.

10. Fourth, it is established that the requisite majorities were obtained. The scheme was approved by 81.3% of the scheme shareholders by number representing 86.34% by value of those voting.

11. Fifth, I must consider whether the meeting was fairly representative of those entitled to vote. The meeting was attended in person or by proxy by 1349 scheme shareholders. This was a turnout of 25.77% by number and 54.60% by value of the scheme shareholders. I am satisfied that this may be taken as representative of the constituency entitled to vote. Of those voting, 1336 shareholders cast their votes in advance of the meeting and did not attend.

12. Sixth, and this is the critical consideration on this application, I must be satisfied that I can properly rely upon the outcome meeting. There are many facets to that prism through which the meeting is viewed. Was information fairly presented to the scheme shareholders? Was there an adequate period for consideration? Were there incentives offered which (whilst not sufficiently material to fracture the class) can be seen in the outcome of the meeting to have significantly influenced the vote? Were votes cast otherwise than *bona fide* in accordance with class interests? Is there any evidence of coercion? The list of questions is not exhaustive but illustrates the subtle nature of the enquiry: can the vote be trusted?

13. In the instant case HBK Investments LP ("HBK") appear by Leading and Junior Counsel (Mr Chivers QC and Mr Blake) to argue that it cannot be and that I should withhold sanction until after another meeting is held, then consider sanction in the light of the outcome of that further meeting. There have also been letters of objection from six other entities ("the Objectors").

14. At the date of the scheme meeting HBK held 100 scheme shares (which it used to vote against the scheme). It also held derivative interests in 36.3 million scheme shares, which it had acquired after the bid announcement at

prices above Caesars offer price of 272 pence (ranging from 265 to 282 pence). Since the scheme meeting HBK has acquired further derivative interests.

15. The expression "derivative interests" can cover (amongst other things) put and call options, futures, contracts for differences, spread bets and other contracts where the value of the instrument is determined directly or indirectly by the reference price of the underlying security, but which do not involve delivery of that underlying security. Such contracts may or may not include a power for the owner of the derivative interest to direct how rights attaching to the underlying security shall be exercised. The evidence does not disclose the precise nature of HBK's "derivative interests" or what powers were conferred upon HBK in relation to the exercise of voting rights attaching to the underlying securities. At times during the hearing, it was assumed that the derivative interests were contracts for differences. Under such a contract the counterparty may or may not have hedged its position by acquiring scheme shares. The realities of business suggest that if HBK entered CFDs then HBK's counterparty probably would have done so and would exercise voting rights in accordance with the likely wishes of the holder of the CFD. That is, however, an informed guess.

16. S.897 of the Companies Act 2006 requires that the notice of the scheme meeting given to shareholders must be accompanied by a statement explaining "the effect of the compromise or arrangement". The Practice Statement of 26 June 2020 directs (in paragraphs 14 and 15) as follows:-

> "Explanatory statements should be in a form and style appropriate to the circumstances of the case, including the nature of the member… constituency, and should be as concise as the circumstances admit. In addition to complying with the provisions of section 897… of the 2006 Act, the commercial impact of the scheme must be explained and members… must be provided with such information as is reasonably necessary to enable them to make an informed decision as to whether or not the scheme is in their interests, and on how to vote on the scheme…. The court will consider the adequacy of the explanatory statement at the convening hearing. The court may refuse to make a meeting order if it considers that the explanatory statement is not in an appropriate form. However, the court will not approve the explanatory statement at the convening hearing, and it will remain open to any person affected by the scheme to raise issues as to its adequacy at the sanction hearing. "

This statement is a distillation of well-known authorities.

17. The Scheme Document contained, as is usual, both a Chairman's Letter and an Explanatory Statement. The Chairman's Letter referred to the successful launch of the Company's mobile offering in the US, but then noted the Board's recognition (i) that in pursuing those growth ambitions, significant marketing spend and multi-year investment would be required in the context of an intense competitive environment; and (ii) that in order to maximise opportunities in the US the Company would need to broaden the scope of its existing relationship with Caesars. The letter then continued:-

> "Following an unsolicited approach from [Apollo] and an initial written proposal from [Apollo] on 27th of August 2020, [the Company] began discussions with a number of potentially interested parties. On 2 September 2020 [the Company] received an initial written proposal from Caesars. Following this, [the Company] held several rounds of negotiations with Caesars regarding the terms of a potential Acquisition, resulting in the acquisition price of 272p in cash for each William Hill Share. On 27 September 2020, Caesars served on [the Company] notice of its addition of [Apollo] and its affiliates to a list of "Restricted Acquirers" under the terms of the joint venture agreement between [the Company] and Caesars. Under

> the joint venture agreement, if a Restricted Acquirer gains control of [the Company], Caesars has the option to terminate the US joint venture's mobile market access rights and rights to operate sports books at Caesars premises that Caesars currently provides."

The Chairman's Letter went on to explain the reasons behind the recommendation of the offer as superior to alternative strategies for realising value and to the other proposals received (including references to employee retention arrangements and the protections accorded to employees in any divestment programme).

18. The Explanatory Statement set out the background to the growth of the Company's business in the US and how "Caesars [was] a key partner in the US" affording access to 14 states and 54 properties. It then continued:-

> "Caesars has the right to periodically add to or substitute names to a limited list of "Restricted Acquirers" of [the Company] (the Company having a reciprocal right in relation to Caesars) whereby inclusion on this list would give Caesars the right to terminate the US joint venture agreement should [the Company] be acquired by one of these Restricted Acquirers. Termination of the joint venture would have the effect of terminating the US joint venture's mobile market access rights and rights to operate sports books at Caesars premises that are granted to it by Caesars." (Emphasis supplied).

19. The underlined passage is a summary of (and not a quotation from) the relevant provision in the joint venture agreement. The relevant provision (ignoring the termination rights) in the joint venture agreement provides:-

> "**Restricted Acquirer** means (a) as designated by [Eldorado] any of [redacted] and their respective Affiliates; and (b) as designated by [the Company] any of [redacted] and their respective Affiliates; provided however that (i) each of [Eldorado] and [the Company] shall have the right to update its list of designated Restricted Acquirers every six (6) months which update shall be notified to the other party in writing (ii) neither [the Company] nor [Eldorado] shall be permitted to designate more than six (6) Restricted Acquirers and (iii) any

such update shall not be deemed an amendment of this Agreement."

20. HBK argues that the summary in the Explanatory Statement provides materially inaccurate and inadequate disclosure of the joint venture termination rights by making it appear that those rights are all but absolute and by presenting the Company's interest in the US joint venture as a "stranded asset" with only a one potential acquirer, so that those casting their votes at the scheme meeting did not have all of the information reasonably necessary to enable them to make an informed decision, with the result that the court cannot rely upon the outcome of the meeting. HBK argues that telling scheme shareholders and those affected by the scheme that Caesars could "periodically add to or substitute names to a restricted list" is significantly different from telling them that Caesars had the right to update its designated list of no more than six names every six months, because the former might (depending on the length of the period) amount to a commercial veto and an effective bar upon a competing bid whereas the latter might (if the six-month period ran from 27 September 2020) represent only a high but surmountable hurdle to the emergence of a competing bid.

21. To appreciate the weight of this argument HBK submits that the court must go back to the Company's Annual Report and Accounts 2019. This (signed on 26 February 2020) had stated that there were no significant agreements to which the Company was party which altered or terminated in the event of a change of control in the Company following a takeover bid. It did not specifically identify the Eldorado joint venture.

22. Then (on 28 September 2020) the Company announced the possible cash offer from Caesars: and it included an "update" on the joint venture. It said:-

> "Under the terms of its established US joint venture agreement with [the Company], Caesars has the right to add or substitute names to a limited list of potential acquirers of [the Company] (with the Company having a reciprocal right), whereby inclusion on this list would entitle Caesars to terminate the US joint venture agreement should the Company be acquired by one of these parties."

The update was to the effect that Caesars had given notice that Apollo would be added to this list, thereby discouraging it from pursuing an alternative offer. HBK submit that until this "update" the market had no idea of the existence of what it calls the "poison pill" and had thought that there was no bar to a competitive takeover.

23. The description "poison pill" is broadly fair because the Restricted Acquirers provision certainly does have the potential for that effect. But the provision also has a commercial purpose: it is a mutual right which enables either party to withdraw from the joint venture, which operates in a highly regulated area, if there was what one party viewed as an undesirable change of control in its co-venturer. It could terminate the partnership with the undesirable co-venturer and seek a new partner.

24. The "firm offer" announcement of 30 September 2020 cast no further light on the Restricted Acquirer provisions, repeating almost verbatim the text of the 28 September "update". It was in the knowledge that Caesars had the right to add or substitute names to a limited list of potential acquirers (and thereby trigger the termination right) that HBK acquired its economic interests in the

Company. Within days HBK had expressed to the Company's financial advisers its dissatisfaction with the offer price.

25. The Scheme Document (containing the Chairman's Letter and the Explanatory Statement) was published on the 26 October 2020. The Explanatory Statement provided incremental information about the Restricted Acquirer provision in that it said that Caesars could "periodically" add or substitute names to the Restricted Acquirers list.

26. On 27 October 2020 HBK spoke with Barclays (the Company's independent financial adviser for the purposes of Rule 3 of the Takeover Code) to communicate its dissatisfaction with the Board's recommendation and to enquire whether counter bidders would have access to the Restricted Acquirers List.

27. On 30 October HBK contacted the Takeover Panel to request additional disclosure in respect of the JVA and raised the concern that, given the importance of the Restricted Acquirers List, shareholders needed more insight into how the list worked. The request was repeated on 2 November 2020; but the Takeover Panel took no action.

28. After a telephone call between HBK and the Chairman of the Company, which yielded no additional information, on 18 November 2020 HBK wrote to the Company reiterating its dissatisfaction with the offer price, asserting that the Board had failed to exploit its negotiating advantages, and stating:-

> "We are shocked that the full details of the Restricted Acquirer list were not disclosed as part of the offer process… Surely a full understanding of the bidder's ability to block third-party offers is relevant to a shareholder's decision?"

29. The scheme meeting was held the following day (19 November 2020). HBK attended and asked two questions. How often could names be changed? Was there a maximum number of names on the Restricted Acquirers list? The answer given was that one name could be altered every six months; but there was a maximum of six names on the list. The first answer was not in fact accurate: all six names could be changed every six months. HBK does not suggest that the mistake was material.

30. This was new information. No-one sought an adjournment of the meeting to consider it. The Chairman decided not to adjourn. Consideration had to be given to the question whether it was material new information which ought to be the subject of a further announcement. In consultation with Barclays the Company decided that it was not sufficiently material.

31. On 4 March 2021 HBK renewed its criticism of the board's recommendation and of the level of disclosure. Its letter advanced the view that the scope for Caesars to invoke a poison pill in support of its acquisition was highly relevant information that should have been fairly disclosed to the scheme shareholders, that disclosure required not simply disclosure of the existence of the poison pill but also disclosure of any relevant limitation upon the power to add or substitute names, and in particular that having been exercised on the 27 September 2020 the power could not be exercised again until 27 March 2021, so that the true scope for the Company to be the subject of a competing takeover offer (in relation to Caesars' offer or in the future) was not fairly put before the scheme shareholders. HBK restated this position in a further letter dated 11 March 2021, observing that the use of generic language in the

Explanatory Statement rather than a recitation of the terms of the Restricted Acquirers provision appeared to be a deliberate choice. In a yet further letter dated 16 March 2021 HBK pressed for information about how the six-month period had come to be selected.

32. On 18 March 2021 the Company made a market announcement of the opposition of HBK to sanction being given and set out clearly HBK's objection that the Scheme Document should have specifically described the applicable time limits within which alterations to the Restricted Acquirers list could be made.

33. That same day HBK caused an open letter sent to the Company's shareholders and stakeholders. It recounted HBK's strongly held belief that shareholders voting at the scheme meeting did so without information which would have allowed them to weigh up its true merits in particular with reference to the Restricted Acquirers provision, which it described as "significantly more limited" than that summarised in the Explanatory Statement. The letter urged shareholders and stakeholders to write to the Court and to the Company if they believed that this information should have been disclosed or could have influenced the voting decision.

34. No person who was a shareholder at the date of the scheme meeting has done so (save one). Nor has there been any response by such a person to the Company's announcement (from those who did attend or from those who did not attend the scheme meeting). The one shareholder respondent was Seven Pillars Capital Management LLP, which owned 875,064 shares at the date of the scheme meeting and used them to vote against the scheme in any event. It

plainly was not misled by the "deficiency" of which complaint is made (but equally plainly would like another opportunity to convert others to its dissentient view).

35. But HBK does have support from others who held derivative interests at the date of the scheme meeting. Samson Rock Capital LLP (which acquired its derivative interests shortly before the scheme meeting) wrote on 19 March 2021 to support HBK's view as to the inadequacy of the disclosure relating to the Restricted Acquirers list. GWM Asset Management Limited wrote on 23 March 2021 to complain that the failure to specify the mechanics of the "poison pill" prevented a possible auction for the Company by preventing third parties from presenting alternative offers (alongside a suggestion that changes in the market warranted a review). On 24th of March 2021 TIG Advisors LLC (who held "contracts for difference" at the date of the scheme meeting) wrote to say that if they had known about the six-month rule disclosed that the scheme meeting in advance of it they would have converted their economic interest into physical shares in order to vote against the scheme because they considered the Company "a scarce asset that could attract interest beyond acquirers listed in the Restricted Acquirers List" (an observation that is a little difficult to understand). On 30 March 2020 Carlson Capital LP (the holder of an economic interest at the date of the meeting) wrote to the Company recording its opposition to the scheme and complaining of the disclosure relating to the joint venture in the scheme document and that the incremental information provided at the scheme meeting relating to the Restricted Acquirers list was not available to those (like themselves) who did not attend the meeting. A private investor has written to the Company to say

that he is glad that the scheme is being challenged because he does not think the price adequate (a view expressed by some institutional investors at the outset).

36. There is, of course, the difficulty in weighing these objections that Hildyard J referred to in Re Stronghold Insurance [2018] EWHC 2909 (Ch) at [142]-[144]. Insofar as these objections go beyond what is said by HBK the court does not have the benefit of argument and it falls to Counsel for the Company to deal with the points raised.

37. The approach of the court at the sanction hearing is not in doubt.

(a) The underlying objective of the scheme meeting is to determine fairly the views of the class as to the interests of the class: Re G W Pharmaceuticals [2021] EWHC 716 (Ch) at [24]

(b) As part of that process the statute requires that an Explanatory Statement be sent to class members. The function of the Explanatory Statement is to explain *the effect* of the scheme: s. 897(2) Companies Act 2006.

(c) The Explanatory Statement must be as concise as the circumstances permit but must contain such information as is reasonably necessary to enable scheme shareholders to make an informed

decision as to whether the scheme is in their interests (Practice Statement paragraph 14).

(d) This means that the scheme document must (unless impracticable) contain "such a statement of all the main facts as will enable [the class concerned] to exercise their judgment on the proposed scheme": Re Dorman Long & Co [1934] Ch 635 at 666. These "main facts" are not confined to those which tend to support the recommendation of the directors; they include everything that is objectively material to the decision of a class member e.g., that a supporting trustee for debenture holders has a conflicting personal interest (*ibid* at p.671) or that a valuation had been obtained in a certain sum (even though the directors did not think it reliable) (*ibid* at 672).

(e) Because the scheme jurisdiction represents a most formidable compulsion upon the dissentient member of the class, the process under Part 26 depends upon full and accurate information being provided to those who are to vote on the scheme: Re Ophir Energy [2019] EWHC 1278 (Ch) at [22]. It demands scrupulously fair and

accurate compliance with the requirements of the statute and of the Practice Statement: Re Sunbird Business [2020] EWHC 2493 (Ch) at [127].

(f) In a transfer scheme such as the present the fundamental question facing every class member is whether, in order to realise value from their shareholding, they wish to rely on the present and prospective market estimation of that value or whether they want to lock into a substantial premium over and above that market value. I have taken that formulation from a decision of my own: see Re Inmarsat [2019] EWHC 3470 (Ch) at [40].

(g) It is to that question that the Explanatory Statement is directed. It is addressed to shareholders who are being invited to exit the Company, not to potential bidders for the Company.

(h) The grant of a sanction is not a formality because the court has an unfettered discretion: but the court will be slow to differ from the outcome of the scheme meeting unless (to take one example) there has been a lack of proper consultation. See Buckley on the Companies Acts at para [219].

(i) The court retains a discretion to sanction the scheme notwithstanding an inaccuracy or omission in the information provided to scheme shareholders, having regard to the materiality of the inaccuracy or omission: Re Sunbird Business [2020] EWHC 3459 (Ch) at [44]

38. With those principles in mind, I approach the objections raised.

39. First, the key question is not whether further information or further detail could have been given by the Company: the question is whether what was given was sufficient for the purpose i.e., to enable an informed decision on the question in hand to be made.

40. Second, the question in hand for each class member was whether to exit the Company at 272p per share or whether to retain the shareholding and see what value the market attributed to it.

41. Third, each class member would bring his or her own circumstance to bear in deciding that question. The Explanatory Statement has to be addressed to the ordinary class member and to what are reasonably considered to be his or her interests as a class member. Thus, the Board had to disclose the objectively main facts as to the circumstances in which the exit opportunity arose and the full terms of that opportunity. The Board also had, by reference to the current and anticipated business of the Company, to explain why it said that the opportunity should be taken and the main facts objectively relevant to that explanation. In essence, these related (i) to the prospects for the UK and European business and (ii) to the opportunities for further growth in the US as

a co-venturer with Caesars, and what was required to exploit them. It was no part of the Board's recommendation that the Company's US interests had to be sold and that there was only one purchaser: but the Board had to disclose the existence of the "poison pill". An ordinary class member who rejected the offer of 272p per share in the hope that the market would attribute a higher value would rightly complain if he or she later discovered that a "poison pill" meant that only lower offers emerged because of the risk of termination.

42. Fourth, whilst it may be material to disclose to the ordinary class member the existence of a termination right in relation to a key business relationship it does not follow that it is necessary to disclose the precise terms. The relevance of the precise terms will vary according to the circumstances which each class member brings to bear on the decision process. To the holder of derivative interests (treating him or her as a class member for this purpose) who purchased at a reference price above the offer price and who is embarking upon "bumpitrage" (soliciting support for opposition to the proposed bid in the hope of eliciting an increase in the offer price of 272p or a competing bid) the *precise* terms of a poison pill may well be significant. Unless they can procure a higher offer or induce a competing bid, they will suffer a loss upon their speculation. But an ordinary shareholder who recalled that his or her shares had slumped to 37p only six months before the Caesar offer is likely to view an offer of 272p per share very differently. So too would a shareholder who had acquired shares at the placing price of 128p per share only three months earlier, in June 2020. So too would a shareholder for whom Caesars' offer represented a more than 50% premium to the value attributed by the market the day before the Caesars' approach. I am not convinced that class members

as a whole would regard the precise terms of the joint venture termination right as significant.

43. Fifth, it is easy to say that more information should have been provided in relation to what is asserted to be a matter of significance to a shareholder's consideration. For example, in the instant case Kite Lake Capital said at one point that insufficient information had been provided about the status of the proposals to divest the non-US business to enable shareholders to be satisfied that full value was to be obtained. Again, GWM Asset Management Ltd said the scheme shareholders were not told of the contemporaneous flotation of a company in which the Company had a significant minority interest. The court must be astute to see such "deficiencies" are not deployed to frustrate the wish of the statutory majority and to turn the sanction process into some sort of game whose object is to enable those who buy into a bid situation to maximise their returns. That is why the court imposes the filter of needing to be satisfied that the deficiency is such that it caused mistaken votes to be cast: that if the deficiency had been rectified then it would have caused an assenting shareholder to have changed his view or an abstaining shareholder to have voted against the scheme. On this see Re Heron [1994]1 BCLC at 672a-674d. The objections arise principally (if not entirely) from those who were (at the date of the scheme meeting) holders of derivative interests acquired after the announcement of the bid approach. Nobody who was a shareholder as at the scheme meeting has aligned themselves with the objections raised (save only Seven Pillars to whom the "deficiency" was irrelevant). No shareholder has said that they cast their vote under a material misapprehension: notwithstanding HBK's open letter of invitation to do so, or the Company's

RNS announcement. There is no evidence to suggest that the outcome of the scheme meeting does not represent the views of the class as to the interests of the class.

44. Sixth, Counsel for the Company submitted that I should approach objections by holders of economic interests with caution: Mr Chivers QC, on the other hand, said that as a judge in a business court I should recognise business realities. But I think that there is something in the cautionary note. I should be wary about overturning the views of those who were entitled to vote because of objections taken by those who were not entitled to vote. The evidence does not establish (save perhaps in the case of TIG Advisors LLC) what control the holders of economic interests had over the votes attaching to the underlying shares (assuming that the counterparty had hedged its liability under the derivative contract): nor does it establish how such powers were exercised or how the votes attaching to the underlying shares were in fact cast at the scheme meeting. (I have not overlooked the fact that HBK did vote against the scheme in respect of 100 shares).

45. Seventh, it is of course necessary to consider the impact of the provision of new information at the scheme meeting; to consider whether the fact that one attendee asked a question, that the answer was heard only by those attending the meeting, and that many shareholders had voted in advance of the meeting (and so in ignorance of the new information) somehow invalidates those pre-cast votes. One has to enquire what is the likelihood that those who voted in that way (or of those who abstained from voting without knowing about the new information) would have regarded the new information as significant. I

have already indicated that I am not persuaded that an ordinary class member would have regarded it as significant; no one attending the meeting (including HBK) thought it sufficiently significant to request an adjournment of the meeting, and Barclays did not regard it as sufficiently significant to report to the Takeover Panel (which has already decided to take no action upon HBK's complaints at the time of the publication of the scheme documents). So, I would not regard the votes cast by non-attendees as unreliable on that account.

46. Eighth, the essential point of the objections is to secure the holding of a new meeting (with different shareholders and in different market conditions) to give the dissentients a second chance to dissuade the existing statutory majorities from their expressed views. It is these differentiating factors (a different shareholder base and different market conditions) that the objectors hope will lead to a failure of the scheme and the restoration of their opportunity to profit from their speculation. The position as regards the influence of the nature of the termination right will be the same. HBK's case is that the vote at the scheme meeting cannot be relied upon because it embodies the misapprehension that Caesars had an immediately effective power to exclude a counterbid. But in any announcement preceding the new meeting the Company would be bound to communicate that Caesars had the right every six months to add to or substitute names to the Restricted Acquirer's list *and that the right was now immediately available* so that Caesars had an effective power to exclude a counterbid. The original meeting was (on this analysis) held upon the same basis as the proposed new meeting would be held.

47. Having weighed these matters I am satisfied that I can rely on the outcome of the scheme meeting because (i) the Explanatory Statement contains sufficient information for an ordinary class member to make an informed decision upon the question presented by the scheme; (ii) if there was a deficiency it was not one of sufficient materiality to cause an ordinary class member to change his or her vote; (iii) there is no evidence that any class member was actually misled; (iv) I should in any event be reticent about overturning the vote of class members largely at the behest of those who were not class members (but simply persons or entities affected by the scheme); and (v) any new meeting could not invite class members to consider the scheme on any basis other than that upon which it is alleged they considered it at the original meeting (these being independent as well as cumulative reasons).

48. Having considered the sixth issue at length I can turn to the penultimate issue: is the scheme "fair" i.e., one that might properly be entered into by an ordinary class member addressing the issues for decision from the standpoint of ordinary class interests? By its very nature this issue interacts with the question whether the court can rely upon the outcome of the scheme meeting. The issue is different from: is this the best available scheme? That is because individual shareholders may have very different aspirations as to what they want and very different attitudes to the risks that they are prepared to run to achieve that desired outcome.

49. The essence of the present scheme is that the scheme shareholders are being invited to give up their rights as shareholders in the current and future business

of the Company for a present payment of 272p per share. That offer price represents:-

(i) a 57.6% premium to the closing share price on the day preceding Caesars' first approach to the Company;

(ii) an 80.7% premium to the volume weighted closing price for the three-month period preceding the commencement of the offer period;

(iii) a 112.5% premium to the last placing price on 17 June 2020; and

(iv) a 25% premium to the price on the last business day before the commencement of the offer period.

The transaction is one recommended by the Board of the Company who were themselves advised by Barclays Bank plc, Citigroup Global Markets Limited and PJT Partners (UK) Ltd. That does not mean that it is assuredly the best scheme that is available. But it is one that, at the time it was agreed, very substantially exceeded the market's own estimate of the Company's prospects and one which was, and is, supported by a respectable body of opinion. There are no grounds for saying that an ordinary class member having regard to ordinary class interests could not properly enter upon the transaction.

50. The final question to address is whether there is some “blot” upon the scheme which prevents it from being effective. It is not suggested that there is.

51. For these reasons I sanction the scheme (upon the usual undertaking from the acquirer which is proffered).