

CAYMAN ISLANDS

GRAND COURT

In the Matter of Sections 15 and 86 of the Companies Law (2010 Revision) (as amended) and In the Matter of the Grand Court Rules 1995 Order 102 and In the Matter of Little Sheep Group Limited Cause No. FSD 182 of 2011, per Jones J (20 January 2012)

COMPANIES - SCHEME OF ARRANGEMENT -
MAJORITY IN NUMBER - COUNTING CUSTODIAN
VOTES

The Company, listed on the main board of the Hong Kong Stock Exchange, sought to privatize by way of a scheme of arrangement under Section 86 of the *Companies Law*. Under that section, a scheme becomes binding only if (a) it is approved by a majority in number representing seventy-five percent in value of the Company's members and (b) it is sanctioned by the Court.

An application for directions was brought to the Court on the question of how to calculate the statutory majority requirement in the context of a company whose shares are held primarily through a single custodian or clearing house. It was acknowledged that the phrase "majority in number" implies a simple head-count. However, the Court noted that in this context it was perfectly entitled to take notice of the fact that custodians and clearing houses are not the beneficial owners of the shares registered in their names.

Such an entity can only vote the shares registered in its name in accordance with the instructions received from its members or clients. When shares are registered in the name of a custodian or clearing house, the Court is bound to treat it as a member of the company but it is also entitled to treat it as a multi-headed member for the purpose of the count.

As such, the clearing house was permitted to vote both for and against the scheme in accordance with the instructions from its

participants. The head count would be calculated by figuring the number of votes cast in favour of the scheme and the number of participants on whose instructions they are cast and the number of votes cast against the scheme and the number of participants on whose instructions they are cast.

The number of participants from whom the clearing house received instructions (both for and against) will determine the number of votes attributable to the clearing house for the purpose of determining whether the majority in number has been achieved.

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