

Recent scheme of arrangement believed to be BVI's first

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New ground was broken last December in the British Virgin Islands when what is believed to be the first scheme of arrangement procedure under the BVI Business Companies Act, 2004 (BCA) was completed.

In the scheme of arrangement Amber Petroleum Ltd (Amber) completed a successful reverse takeover of AIM-listed AfNat Resources Limited (formerly Lithic Metals and Energy Limited) (AfNat) under section 179A of the BVI Business Companies Act, 2004 (BCA).

Section 179A borrows heavily from section 425 of the English Companies Act and provides a statutory and court sanctioned exchange of collective rights of creditors or shareholders. The scheme must be approved by a high proportion of the affected creditors or shareholders; there must be complete transparency throughout the procedure and the Court will only sanction a scheme if it is fair to do so.

In Amber's case, each Amber shareholder was invited to vote on a scheme which allowed them to exchange each Amber share they held for 6 new shares in AfNat in order to gain access to a public market for their investment. The meeting of the Amber shareholders was convened in accordance with an order of the BVI Commercial Court and following the approval of the requisite majority (a majority in number of those Amber shareholders present in person or by proxy at the meeting representing at least 75 per cent. in value of the shares which are voted at that meeting), the scheme was sanctioned by the BVI court and took effect once the order of the court was filed at the Registry of Corporate Affairs in the BVI on 22 December 2009.

A key advantage for Amber and AfNat of using the scheme of arrangement procedure was that they had the certainty of knowing that once the requisite resolution had been passed by the Amber shareholders and sanctioned by the Court, the scheme would be binding on all of the Amber shareholders. This means schemes of arrangement are definitely an efficient means of concluding a takeover without the added complications of statutory rights for dissenters which may apply to a takeover structured by way of a statutory merger or court approved plan of arrangement.

This recent ground-breaking transaction further demonstrates the flexibility of BVI corporate law and its suitability to a wide range of circumstances.

Rachel Graham, London Corporate Partner, was lead counsel on the deal described above and Christopher Young, Litigation Partner in the BVI office, represented Amber at the BVI court hearings.