



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 212 OF 2024 (IKJ)

**IN THE MATTER OF SECTION 35 OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF UNIRUWEL HOLDING LIMITED**

IN COURT

Before: The Hon. Justice Kawaley

Appearances: Ms Dunzelle Daker, Ogier, for the Petitioner

Date of hearing: 18 September 2024

Date of Judgment: 18 September 2024

Application for approval of discounted share allotment-governing principles-Companies Act (2023 Revision), section 35

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EX TEMPORE JUDGMENT

Introductory

1. In this matter the Petitioner applies for an Order under section 35 of the Companies Act (2023 Revision), “*confirming the proposed issuance of 2,165,800,000 shares in the capital of the Company with a par value of US\$1.00 each at a discount to par of US\$0.99 each (the ‘Discounted Allotment’)*”.
2. The Petition was presented on 16 July 2024 and is not opposed. It is clear, having heard Ms. Daker, that the Order that is sought should be granted. But because the only prior reported published decision dealing with a similar application dates back to 2008, it seems to me that I should give short reasons to explain why I propose to grant the Order sought.
3. The Company is a holding company which is ultimately held by a Taiwanese listed company (“ListCo”). The purpose of the discounted allotment is to allow the Company to invest by way of equity an amount equivalent to €20million into Unimicron Germany GmbH. This is a German subsidiary (the “German Sub”) which, as I understand it, manufactures certain renewable energy products.

Statutory jurisdiction

4. The starting point of the analysis is to look at the statutory provisions and in paragraph 13 of the Petitioner’s counsel’s Skeleton, the relevant section of the Companies Act is helpfully set out. And section 35, so far as is material to the present application, provides as follows:

“Power to issue shares at a discount

35 (1) Subject as provided in this section, it shall be lawful for a company to issue, at a discount, shares in the company of a class already issued:

Provided that -

(a) the issue of the shares at a discount has been authorised by resolution of the company, and has been sanctioned by the Court;

(b) *the resolution specify [sic] the maximum rate of discount at which the shares are to be issued;*

(c) *not less than one year, at the date of the issue , has elapsed since the date on which the company was entitled to commence business; and*

(d) *the shares to be issued at a discount are issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.*

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application the Court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

5. Subsections (3) and (4) of section 35 have no apparent relevance to the present application.

The factual matrix

6. Prior to the hearing of this Petition, an application for directions was made and granted on the papers. And in addition to directing that the Petition be heard on today's date, two other directions were given:

“ 2. The settlement of a List of Creditors of the Petitioner be dispensed with.

3. The Petition shall be advertised on two occasions in English and in Chinese in a newspaper having circulation in Taiwan and also in English only in the Cayman Islands Gazette as soon as practicable and in any event no later than 7 days before the final hearing of the Petition.”

7. The Petition was verified by the First Affirmation of Tseng Tzyy Jang and that Affirmation explained, amongst other things, that the Company was incorporated on 1 April 2011, and the purpose of the Discounted Allotment. The need for the discount was very straightforward indeed.

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The par value of the shares in the Company is \$1.00 per share, the net asset value of the Company's shares is \$0.01 per share; and so, the aim of the Discounted Allotment is to permit ListCo to make an indirect investment into the German Sub at a commercially rational price.

8. The Affirmation exhibited the Articles of Association and also the Resolution of the Sole Director Mr Jang, and the Sole Shareholder's Resolution approving the proposed Discounted Allotment. The other Affirmation was affirmed by Shay Miller, an Ogier paralegal. He deposed to the advertisement requirements being met and exhibited the requisite advertisements in the Cayman Gazette, and in both Chinese and English in Taiwan.

Application of the statutory principles

9. The question which then arose was to focus on what the actual statutory requirements were. Ms Daker referred the Court to the principles that were applied by Levers J in the case of *Re Hannspree Incorporated* 2008 CILR 40 (applying *Re Esmeralda Exploration Ltd* [1991] FCA 625). Those principles are followed in Australia based on Australian statutory provisions, which at the time that the relevant decision of Levers J was made, corresponded to our own section 35.
10. The relevant factors, as summarized in paragraph 17 of the Petitioners Skeleton, which the Court must have regard to are as follows:

“17 (i). *the public interest in ensuring that prospective shareholders and creditors are not misled by a nominal capital figure that exceeds the true capital of the company;*

(ii). the effect of the proposal upon the interests of actual or prospective shareholders and creditors;

(iii). the extent to which shareholders have been informed of the reasons for the issue prior to voting on it;

(iv). the extent to which creditors may find the proposal objectionable and the notice, both formal and substantive, that they have been given to enable them to object if they so wish; and

(v). *the objectives of the proposed issue and the extent to which it serves the interests of the shareholders and creditors of the company. On the evidence available, the Court ought to consider whether the proposed course was commercially appropriate for the company to pursue*”

11. The *Esmeralda case* and in fact the case in which it was considered by Levers J, involved a factual matrix which was somewhat more complicated than that in the present case, for two reasons. Firstly, in the present case the Company is a holding company and so there are no creditors. This is why at the directions stage I dispense with the need to file a List of Creditors. Secondly, this is a Company which only has one shareholder, so the need for concern about informing multiple shareholders does not arise.

Conclusion

12. Having regard to the materials put before me, and the relevant statutory context, I am satisfied that the various requirements of section 35 (1)(a)-(c) have been met.
13. In these circumstances, I am content to grant an Order in the terms of the draft that was placed before the Court which provides:

“It is ordered that:

1. *Pursuant to section 35(2) of the Companies Act (2023 Revision), the proposed issuance of 2,165,800,000 shares in the capital of the Petitioner with a par value of US\$1.00 each at a discount to par of US\$0.99 each, approved by ordinary resolution of the Petitioner and the sole member of the Petitioner dated 26 June 2024, is confirmed.*
2. *No order as to costs.”*



THE HONOURABLE JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT