AGENTS MUTUAL VOTING MEMBER OBJECTION

IN THE HIGH COURT OF JUSTICE **CR-2017-001049**
CHANCERY DIVISION
COMPANIES HOUSE

IN THE MATTER OF AGENTS MUTUAL LIMITED
&
IN THE MATTER OF THE COMPANIES ACT 2006

SCHEME OF ARRANGEMENT
(under part 26 of the Companies Act 2006) between

AGENTS MUTUAL LIMTED
&
ITS MEMBERS

For the attention of the presiding Judge.

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Representation on the above:

As a Gold Member of Agents Mutual Limited I contend that the vote placed before the Court for sanction cannot be a true representation of Members intentions due to a number of issues including non-disclosure of material facts, a lack of proper consultation and an unfair "lock-in" period whereby Members who voted NO (against the Majority Yes Vote) are held into their original Agents Mutual Contract with no prior knowledge or information offered to Members at the inception of their joining that such a fundamental change of ownership/strategy & the abandoning of its "Mutual Foundation" would result in being forced to remain with a New Company with vastly different principles/strategy including the arrival/introduction of shareholders not mutual members.

I would respectfully implore the court requests from the Board of Agents Mutual Limited a copy of the Executive Management Contracts entered into by the Board of Agents Mutual Ltd in early 2013, which were apparently updated in September 2016, nearly 12 months prior to the IPO proposal. These contracts, which incentivised the Management Team, were never discussed nor ratified by the mutual members. In addition, although requests for publication have been made, these have been refused by reason that they are deemed to be confidential. We note that some mutual members (not withstanding that they are members of the Board) are aware of the contents yet will not allow the other members the same benefits. Knowledge of the exact contents of said contracts may have affected the voting decisions taken by many of the mutual members.

The formation of Agents Mutual Limited was portrayed at the time (of inducing Members to join and commit to contributing financially including "Loan Notes") as being created under the principle of a mutual membership with one member one vote. There are repeated instances where this "mutual membership" principle does not seem to have played any part in the Boards decisions. I would therefore question their conduct under the duty of care responsibility that all Directors carry. The original basis for the company, and the reason many joined, was that no one member or small group of members would be able to dictate the direction of the company. This is exactly what has happened, seemingly by deliberate intention or otherwise.

As a Gold Member I attended a "Roadshow" style presentation by Mr Ian Springett during August 2017 where the case for the IPO proposal was made. I note that no alternative was placed before the members for discussion, with the IPO being essentially the only plan 'on the table'. The proposal was simply put forward as "Float or Fail". No previous consultation with members had taken place, even though the decision by the Board to move forward with their plans for an IPO had been made prior to September 2016. In fact, no communication of their plan had been made to the mutual membership prior to their announcement of the IPO proposal and the issue of the relevant paperwork. The speed and timing of the announcement and subsequent vote meant that any effective opposition to the proposal was hampered, whether intentionally or otherwise.

The Board has placed great emphasis on their assertion that the formula for the division of shares has been created independently of the Board and as such is portrayed as fair. I would question this, in that it takes account of payments already made to Agents Mutual Limited which were for the running costs of the company and as such members have already benefited from those payments. It follows that those members with the most branches will have paid in the most money, but this was based on the accepted rate card. However, there is no reason for members to benefit twice from these payments other than those with the largest payments reaping the largest rewards from the IPO, in direct contradiction to the principles of mutual membership. The formula also does not take into account, with regards to the loan notes held by members, the interest already received by said members on those loan notes.

I note that the quoted "independent" formula was not discussed nor agreed in any way whatsoever with the mutual membership, and indeed was not known to them until the publication of the proposal.

With regards to the independent formula and the division of shares one notes Mr Springett's email response to me (Mr Graeme Lumsden, a Gold Member of the company) which is in the public domain; and in which he states the following:

"At IPO, the estimated splits are: Investors 17% Management 14% Agents 69% (of this, the estimated percentage in the hands of the Board firms is 6.7%)

If we have, prior to IPO, entered into any agreements to bring in new agents as shareholders in return for listing agreements, then the Management percentage will reduce and the Agents percentage will increase.

As you know, it is our strategy to issue substantial further share value to attract key agents as committed listing and paying customers of OTM. The presentation gave an estimate (subject to many moving parts) of the ownership percentages once this is completed and subject to no share disposals by any party.

They are: Investors 12% Management 10% Agents 78%."

Although the Board and Mr Springett make great play on the 'fact' that Agents will retain 78% of the company; they do not clarify those figures. If they had done so, many may have voted differently.

As outlined by another Gold Member, Mr John ?, the above can be simplified by taking the number of shares issued as 100. For Management's share to reduce from 14% to 10% means a further 40 shares would need to be issued for a total of 140 shares. Those 40 shares, as a percentage of 140, are 28.57% (i.e. 40/140). If you take 28.57 from the 78% noted by Mr Springett you end up at 49.43%.

This basically means that 50.57% of the issued shares will be in the hands of the Board Members, the Institutions, Management and the new 'Key' members, which are likely to be the Corporate Agents and OnLine Agents.

Conversely, this means that the remaining mutual members, being over 99% of the overall membership will only retain 49.43% of their mutual company.

Please note, that these straightforward calculations were put to Mr Springett by the aforementioned Gold Member, Mr John ? directly, and he (Mr Ian Springett) declined the opportunity to correct them.

It is contended that the Board may well already have knowledge of this calculation and they may have decided to not make this fact known to the mutual members.

In the last paragraph of his reply (to the aforementioned Gold Member above) Mr Springett also makes the point of this being 'subject to no shares disposal by any party'. The Board (through Mr Springett) have made a point of emphasising the 'lock-in' that would be in force for all shareholders. However, they fail to point out that under the new Listing Agreement (clause 7.2.5) that this does not necessarily apply, and that "any disposal of our member shares to which OnTheMarket has provided its prior written consent" can take place. It seems therefore that the Board have retained the option to allow them to sell shares as and when they wish, whilst denying that option to others if they so wish.

I would also draw the Judge's attention to the Agents Mutual supplied New Listing Agreement and those members who may currently be in breach of membership. It seems clear from the detail in the Member Handbook/Voting Information provided that those in breach have been offered a financial inducement to vote 'yes' whilst at the same time being technically refused the opportunity of voting no. This cannot be fair and equitable, and I would urge your Honour to examine the position in law in the context of all members being treated/viewed equal.

To summarise, I believe that Ian Springett, The Board & Management of Agents Mutual have prepared an IPO proposal that has a number of questionable aspects both in fairness and law. In particular, it appears to maximise the benefit for the minority of members and as such demonstrates that they have ignored their statutory duties as Directors to consult with the mutual members. In addition a wholly unfair "lock-in" period is enforced upon Members who voted NO (against the Majority Yes Vote) whereby these NO Members are held into their original Agents Mutual Contract having received no prior knowledge or information offered to Members at the inception of their joining that such a fundamental change of ownership/strategy & the abandoning of its "Mutual Foundation". The end result is those Vote NO Members being forced to remain and contribute financially to a wholly New Company with vastly different principles/strategy/ownership including the arrival/introduction of shareholders not mutual members.

I would therefore ask the Court not to sanction the IPO based on the reasons given above.

Graeme P Lumsden