

COURT OF SESSION, SCOTLAND

CERTIFIED COPY INTERLOCUTOR

in the Petition of

JOHN SWAN & SONS P.L.C., a public company incorporated under the Companies Acts with the registered number SC007893 and with its registered office at 6 St. Colme Street, Edinburgh EH3 6AD

Petitioner

For Sanction of a Scheme of Arrangement

P906/15
13 October 2015

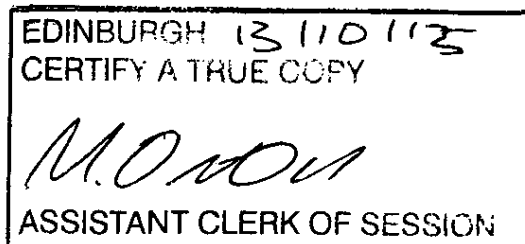
Lord Tyre

Act: Sellar, QC
 Alt: Govier

The Lord Ordinary, having resumed consideration of the Petition and proceedings and having heard counsel on the motion of the petitioner, John Swan & Sons P.L.C. (company number SC007893) (the "Company") (no Answers having been lodged), and under reference to the undertaking by H&H Group PLC, no. 12 of process:

1. approves the report of the Reporter, Mr J B Stirling, solicitor, Edinburgh, no. 11 of process;
2. sanctions the scheme of arrangement (the "Scheme") which is set out in Appendix 1 of the Petition as between the Company and the Scheme Shareholders, as defined in the Scheme;
3. appoints the Company to deliver to the Registrar of Companies in Scotland (the "Registrar"), for registration by him, a certified copy of this order and a copy of the Scheme, as certified by the secretary of, or solicitors to, the Company;
4. directs the Registrar to register this order;
5. orders that notice of that registration by the Registrar be given once in each of *The Edinburgh Gazette* and *The Financial Times* (UK Edition) newspaper;
6. and decerns.

SIGNED BY COLIN J TYRE



THURSDAY



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SCT

15/10/2015

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COMPANIES HOUSE

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in the Petition of

JOHN SWAN & SONS P.L.C.

Petitioner

For Sanction of a Scheme of Arrangement

2015

Ref: S0961.89/LMC
Shepherd and Wedderburn LLP
1 Exchange Crescent
Conference Square
Edinburgh EH3 8UL
DX 551970 – Edinburgh 53

PART FOUR
THE SCHEME OF ARRANGEMENT
SCHEME OF ARRANGEMENT

CERTIFIED A TRUE COPY

Jim Swenke
FOR AND ON BEHALF OF
SHEPHERD AND WEDDERBURN LLP
14 October 2015 DATE

(under Part 26 of the Companies Act 2006)

BETWEEN
JOHN SWAN & SONS P.L.C.
AND
THE SCHEME SHAREHOLDERS
(as hereinafter defined)

PRELIMINARY

(A) In this Scheme, unless inconsistent with the subject or context, the following expressions shall have the following meanings:

"2006 Act"	the Companies Act 2006, as amended from time to time
"A Ordinary Shares"	those Scheme Shares reclassified, but only for the purposes of this Scheme, as A ordinary shares of nominal value 25 pence each in the capital of the Company under the terms of clause 1.1 of the Scheme having the rights set out in the new Article 160B referred to in clause 1.2 of the Scheme
"B Ordinary Shares"	those Scheme Shares reclassified, but only for the purposes of this Scheme, as B ordinary shares of nominal value 25 pence each in the capital of the Company under the terms of clause 1.1 of the Scheme having the rights set out in the new Article 160B referred to in clause 1.2 of the Scheme
"Business Day"	has the meaning given to it in the Code
"Cash Consideration"	the cash consideration due to Scheme Shareholders pursuant to clause 2 of this Scheme
"in certificated form"	in relation to a share or other security, a share or other security title to which is recorded in the relevant register of the share or other security as being held in certificated form (that is, not in CREST)
"Code"	the City Code on Takeovers and Mergers issued by the Panel
"the Company" or "John Swan"	John Swan & Sons P.L.C., incorporated in Scotland with registered number SC007893 and whose registered office is at 6 St Colme Street, Edinburgh EH3 6AD
"Court"	the Court of Session in Edinburgh
"Court Hearing"	the hearing by the Court of the application to sanction the Scheme
"Court Meeting"	the meeting of the Scheme Shareholders to be convened at the direction of the Court pursuant to Part 26 of the 2006 Act for the purpose of considering and, if thought fit, approving the Scheme (with or without amendment), including any adjournment thereof
"Court Order"	the order of the Court to be made at the Court Hearing, sanctioning the Scheme under Part 26 of the 2006 Act
"CREST"	the relevant system (as defined in the Regulations) in respect of which Euroclear is the Operator (as defined in the Regulations) in

"Deed of Agreement and Release"

"Effective"

"Effective Date"

"Election"

"Election Deadline"

"Euroclear"

"Excluded Shares"

"Form of Election"

"H&H"

"H&H Group"

"H&H Shares"

"John Swan General Meeting"

"John Swan Shareholders"

"John Swan Shares"

"Meeting(s)"

"New H&H Shares"

"Panel"

"Pension Scheme"

"Pension Scheme Trustees"

"Pounds", "Sterling" or "pence"

"Press Announcement"

"Receiving Agent"

"Registrar of Companies"

accordance with which securities may be held and transferred in uncertificated form

the deed of agreement and release entered into on 24 July 2015 by H&H, John Swan Limited and the Pension Scheme Trustees in respect of the Pension Scheme

the Scheme having become effective pursuant to its terms

the date upon which the Scheme becomes Effective

an election by a Scheme Shareholder under the Share Alternative (subject to scale-back) to receive New H&H Shares (subject to scale-back) in respect of any or all of the Scheme Shares held by that Scheme Shareholder pursuant to the Scheme

5.00 p.m. on 9 October 2015, or such later time and date as the Company and H&H may agree and the Company may announce through a Regulatory Information Service, being the latest time for receipt of the Form of Election

Euroclear UK & Ireland Limited

(a) any John Swan Shares beneficially owned by H&H or any subsidiary undertaking of H&H immediately prior to the Scheme Record Time, and (b) the 3,000 John Swan Shares held by the Company in treasury

the GREEN form of election for Scheme Shareholders (other than Restricted Overseas Persons) to make the Election in respect of the Share Alternative

H&H Group PLC, incorporated in England and Wales with registered number 00036006 and whose registered office is at Borderway Mart, Rosehill Estate, Carlisle CA1 2RS

H&H and its subsidiary undertakings from time to time and, where the context permits, each of them

ordinary shares of £1.00 each in the capital of H&H

the general meeting of John Swan to be convened to consider and, if thought fit, pass the Special Resolution, including any adjournment thereof

holders of John Swan Shares

ordinary shares of 25 pence each in the capital of John Swan

the Court Meeting and the John Swan General Meeting, together or individually as the context requires

the new H&H Shares to be allotted, and issued, to Scheme Shareholders under the Share Alternative (subject to scale-back)

the UK Panel on Takeovers and Mergers

the John Swan Limited Retirement Benefits Scheme

the trustees of the Pension Scheme

the lawful currency of the United Kingdom from time to time

the joint announcement of the Transaction, dated 30 July 2015, issued by H&H and John Swan in accordance with Rule 2.7 of the Code

Neville Registrars of Neville House, 18 Laurel Lane, Halesowen B63 3DA

the Registrar of Companies for Scotland

"Regulations"	the Uncertificated Securities Regulations 2001 (SI 2001/3755), as amended from time to time
"Regulatory Information Service"	has the same meaning as defined in the AIM Rules for Companies published by the London Stock Exchange plc
"Restricted Jurisdiction"	any jurisdiction where the extension or availability of the Scheme or Takeover Offer would breach any applicable law
"Restricted Overseas Person"	a John Swan Shareholder who is in, or resident in, or whom the Company and H&H reasonably believe to be in, or resident in, a Restricted Jurisdiction
"Scheme"	this scheme of arrangement in its present form or with or subject to any modification, addition or condition approved or imposed by the Court and agreed to by John Swan and H&H
"Scheme Document"	the document in respect of the Scheme sent to, among others, John Swan Shareholders containing and setting out, among other things, the full terms and conditions of the Scheme and containing the notices convening the Meetings
"Scheme Record Time"	6.00 p.m. on the Business Day falling immediately before the date of the Court Hearing
"Scheme Shareholders"	holders of Scheme Shares
"Scheme Shares"	all John Swan Shares: <ul style="list-style-type: none"> (a) in issue as at the date of the Scheme Document; (b) (if any) issued after the date of the Scheme Document and prior to the Voting Record Time; and (c) (if any) issued on or after the Voting Record Time and at or prior to the Scheme Record Time, in respect of which the original or any subsequent holders thereof are, or shall have agreed in writing to be, bound by the Scheme, but in each case other than the Excluded Shares
"Share Alternative"	means the alternative whereby Scheme Shareholders (other than Restricted Overseas Persons) may, on the terms and conditions set out in Appendix 1 of the Scheme Document, elect to receive New H&H Shares pursuant to the Scheme instead of all of the Cash Consideration which they would otherwise be entitled to receive under the Transaction
"Special Resolution"	the special resolution proposed to be passed at the John Swan General Meeting in connection with, among other things, the implementation of the Scheme and certain amendments to be made to the articles of association of John Swan, as set out in Part Ten of the Scheme Document
"subsidiary undertaking"	shall be construed in accordance with the 2006 Act
"Transaction"	the proposed acquisition of the entire issued and to be issued share capital of John Swan by H&H (other than any Excluded Shares) to be effected by means of the Scheme
"uncertificated form" or "in uncertificated form"	in relation to a share or other security, a share or other security title to which is recorded on the relevant register as being held in uncertificated form in CREST, and title to which, by virtue of the Regulations, may be transferred by means of CREST
"Voting Record Time"	6.00 p.m. on the day which is two days before the date of the Court Meeting

(B) References to clauses are to clauses of this Scheme.

(C) References to time are to London time.

- (D) The issued share capital of the Company as at the close of business on 25 August 2015 (the last practicable date prior to this Scheme) was £153,000, divided into 612,000 John Swan Shares, all of which were credited as fully paid, of which 3,000 John Swan Shares were held in treasury.
- (E) As at the date of this Scheme, no member of the H&H Group beneficially owns any John Swan Shares.
- (F) The maximum number of New H&H Shares that may be issued under the Scheme is 125,000 New H&H Shares.
- (G) H&H has agreed to appear by counsel at the Court Hearing and to undertake to the Court to be bound by this Scheme, and to execute and do, or procure to be executed and done, all such documents, acts or things as may be necessary or desirable to be executed or done by it or on its behalf for the purpose of giving effect to this Scheme.

1. Reclassification of Scheme Shares

- 1.1 Each of the Scheme Shares held at the Scheme Record Time shall be reclassified, but only for the purposes of this Scheme, as an A Ordinary Share or a B Ordinary Share, as the case may be, on the following basis:

1.1.1 each Scheme Share in respect of which:

- (i) a valid Election has not been made and/or accepted in accordance with the Scheme under the Share Alternative; or
- (ii) in respect of which a valid Election has been made and accepted in accordance with the Scheme under the Share Alternative (subject to scale-back), but in respect of which no New H&H Shares are to be issued owing to the application of any scale back under the Share Alternative (subject to scale-back),

shall be reclassified into an A Ordinary Share; and

1.1.2 each Scheme Share in respect of which a valid Election has been made and accepted in accordance with the Scheme under the Share Alternative (subject to scale-back), following the application of any scale back under the Share Alternative, shall be reclassified into a B Ordinary Share.

- 1.2 The A Ordinary Shares and B Ordinary Shares shall be subject to the restrictions contained in the new Article 160B to be adopted pursuant to the Special Resolution set out in the notice of the John Swan General Meeting and shall rank equally, shall have the same rights and shall constitute a single class of ordinary shares, save that upon the Scheme becoming effective:

1.2.1 every A Ordinary Share shall confer upon the holder thereof the right to receive Cash Consideration pursuant to the Cash Acquisition under the terms of this Scheme; and

1.2.2 every B Ordinary Share shall confer upon the holder thereof the right to receive New H&H Shares pursuant to the Share Alternative (subject to scale-back) under the terms of this Scheme.

- 1.3 No certificates representing the A Ordinary Shares or the B Ordinary Shares shall be issued by the Company.

2. Transfer of Scheme Shares

- 2.1 With effect from the Effective Date, but subject to clause 1, H&H shall acquire all the A Ordinary Shares and all the B Ordinary Shares, free from all liens, equities, charges, encumbrances and other interests, and together with all rights at the Effective Date or thereafter attached thereto, including the right to receive and retain all dividends and other distributions (if any).

- 2.2 For the purposes of such acquisition, all the A Ordinary Shares and all the B Ordinary Shares shall be transferred to H&H and/or its nominee(s) and to give effect to such transfers any person may be appointed by the Company to execute as transferor an instrument of, or give any instructions to Euroclear to transfer, any A Ordinary Shares or B Ordinary Shares and every instrument or instruction of transfer so executed or instruction so given shall be as effective as if it had been executed or given by the holder or holders of the Scheme Shares thereby transferred.

- 2.3 In consideration of the transfer of the A Ordinary Shares and the B Ordinary Shares, H&H shall pay the cash consideration and allot, and issue, the New H&H Shares in accordance with clause 3 below.
- 2.4 Pending the transfer of A Ordinary Shares and the B Ordinary Shares pursuant to clause 2.2, each Scheme Shareholder irrevocably appoints H&H and/or its nominee(s) as their attorney to exercise any voting rights attached to the Scheme Shares and any or all rights and privileges attaching to the Scheme Shares, to sign any consent to short notice of a general, or separate class, meeting and on their behalf to execute a form of proxy in respect of such shares appointing any person nominated by H&H to attend general and separate class meetings of the Company and authorises the Company to send to H&H any notice, circular, warrant or other document or communication which may be required to be sent to them as a member of the Company.

3. Consideration for the transfer of Scheme Shares

- 3.1 Subject to the remaining provisions of this clause 3, in consideration for the transfer of the A Ordinary Shares and the B Ordinary Shares to H&H and/or its nominee(s) as provided in clause 2, H&H shall;
- 3.1.1 pay to or for the account of the holders of A Ordinary Shares (as appears on the register of members of the Company at the Scheme Record Time) £13.50 in cash for every A Ordinary Share then held by such person; and
- 3.1.2 subject to clause 3.2, allot and issue to each holder of the B Ordinary Shares (as appearing in the register of members of the Company at the Scheme Record Time) 0.574 New H&H Shares for each B Ordinary Share then held by such person.
- 3.2 Fractions of New H&H Shares shall not be allotted or issued to holders of B Ordinary Shares pursuant to the Scheme. All fractional entitlements to which holders of B Ordinary Shares would have been entitled will be rounded down to the nearest whole share.

4. The Share Alternative (subject to scale-back)

- 4.1 The Share Alternative (subject to scale-back) will not be available in respect of Elections relating to more than 217,593 Scheme Shares in aggregate. If valid Elections in respect of the Share Alternative (subject to scale-back) exceed this limit, such Elections will be scaled back *pro rata* (or as near to there as H&H in its absolute discretion considers practical) and the balance of the consideration due to Scheme Shareholders who have made such election will be satisfied in cash in accordance with the terms of the Scheme.
- 4.2 Elections made by Scheme Shareholders shall not affect the entitlements of Scheme Shareholders who do not make any such Election.
- 4.3 A Scheme Shareholder may make an Election in respect of all or any part of his holding of Scheme Shares.
- 4.4 Each Election made by a holder of Scheme Shares, whether in certificated or uncertificated form, shall be made by completion of a Form of Election. To be valid, a Form of Election must be completed, executed by the Scheme Shareholder or his duly authorised agent (or, in the case of a body corporate, executed by an authorised representative), and returned in accordance with the instructions printed thereon so as to arrive at the offices of the Receiving Agent by no later than the Election Deadline.
- 4.5 If an Election is received by the Receiving Agent after the Election Deadline, or is received by the Receiving Agent before such time but is not, or is deemed not to be, valid or complete in all respects at such time, then such Election shall be void unless and to the extent that the Company and H&H, in their absolute discretion, elect to treat as valid any such Election.
- 4.6 Upon execution and delivery by a Scheme Shareholder of a valid Form of Election, that holder shall be bound by the terms and conditions contained in the Form of Election and by the terms and conditions contained in Appendix 2 to the Scheme Document and such terms and conditions shall constitute part of the Scheme.
- 4.7 A Form of Election duly completed may be withdrawn before 1.00 p.m. on 9 October 2015 (or before such later time and date as the Company and H&H may agree and the Company may announce through a Regulatory Information Service) by a notice in writing to the Receiving Agent.

- 4.8 If a Scheme Shareholder has made a valid Election in respect of all, or some, of his Scheme Shares, then the validity of the Election shall not be affected by any alteration in the number of Scheme Shares held by the Scheme Shareholder at any time prior to the Scheme Record Time.
- 4.9 If any Form of Election is received from a Restricted Overseas Person, that Election shall, for all purposes, be void (unless H&H and the Company, in their absolute discretion, elect to treat as valid any such Election).
- 4.10 The New H&H Shares will be issued in registered form, will be held in certificated form, will be issued credited as fully paid and will have the rights set out in H&H's articles of association.
- 4.11 The provisions of this clause 4 will be subject to any prohibition or condition imposed by law or regulation.

5. Settlement

- 5.1 As soon as practicable after the Effective Date and, in any event, not more than 14 days thereafter, H&H shall:

5.1.1 pay such cash consideration which it is required to pay to holders of A Ordinary Shares pursuant to the Scheme and:

- (i) in the case of Scheme Shares which at the Scheme Record Time are in certificated form, procure the despatch to the persons entitled thereto in accordance with clause 5.2 of cheques for the sums payable to them in accordance with clause 3.1.1;
- (ii) in the case of Scheme Shares which at the Scheme Record Time are in uncertificated form, procure that Euroclear is instructed to create an assured payment obligation in favour of the payment bank of the persons entitled thereto in accordance with the CREST assured payment arrangements for the sums payable in accordance with clause 3.1.1, provided that H&H reserves the right to make payment of the said sums by cheque as set out in clause 5.1.1(i) if, for reasons outside its reasonable control, it is not able to effect settlement in accordance with this clause 5.1.1(ii);

5.1.2 allot, and issue, the New H&H Shares which it is required to allot, and issue, to holders of B Ordinary Shares pursuant to the Scheme in certificated form, whether a Scheme Shareholder holds Scheme Shares in certificated form or uncertificated form, and shall procure the despatch to the persons entitled thereto in accordance with clause 5.2 of definitive certificates for the New H&H Shares to be issued to them in accordance with clause 3.1.2.

- 5.2 All deliveries of cheques and share certificates shall be effected by H&H by duly posting the same by first-class post in prepaid envelopes (or by such other method as may be approved by the Panel) addressed to the persons respectively entitled thereto at their respective addresses as appearing in the register of members of the Company or, in the case of joint holders, at the address of that one of the joint holders whose name stands first in such register at the Scheme Record Time.
- 5.3 Neither H&H nor John Swan nor any person or nominee appointed by H&H nor their respective agents shall be responsible for any loss or delay in the despatch or delivery of the share certificates or cheques posted in accordance with clause 5.2 which shall be posted at the risk of the person(s) entitled thereto.
- 5.4 All cheques shall be in pounds sterling drawn on a UK clearing bank and shall be made payable to the persons respectively entitled to the moneys represented thereby (except that, in the case of joint holders, H&H reserves the right to make such cheques payable to that one of the joint holders whose name stands first in the register of members of John Swan at the Scheme Record Time in respect of such joint holding) and the encashment of any such cheque or the creation of any such assured payment obligation as is referred to in clause 5.1.1(ii) shall be a complete discharge to H&H for the moneys represented thereby.
- 5.5 The provisions of this clause 5 shall be subject to any prohibition or condition imposed by law.

6. Share certificates and cancellation of CREST entitlements

With effect from, and including, the Effective Date:

- (a) all certificates representing Scheme Shares shall cease to have effect as documents of title to the Scheme Shares comprised therein and every holder of Scheme Shares shall be bound at the request of the Company to deliver up the same for cancellation to the Company, or, as it may direct, to destroy the same;
- (b) Euroclear shall be instructed to cancel the entitlements to Scheme Shares of holders of Scheme Shares in uncertificated form; and
- (c) as regards certificated Scheme Shares, appropriate entries will be made in the register of members of the Company with effect from the Effective Date to reflect the cancellation of the share certificates relating to such shares.

7. Overseas Shareholders

Notwithstanding the signature and return of an otherwise valid Form of Election, each of H&H and John Swan reserves the right at its sole discretion to determine that the issue of New H&H Shares to any Overseas Shareholder would, or may, infringe the local laws applicable in the jurisdiction of any Scheme Shareholder electing for the Share Alternative or would, or may, require any governmental or other consent or any registration, filing or other formality or condition with which H&H or John Swan (as the case may be, and acting reasonably) is unable to comply or which H&H or John Swan (as the case may be, and acting reasonably) regards as unduly onerous, and in such an event, such Overseas Shareholder shall be deemed not to have made a valid Election for the Share Alternative and shall be paid the Cash Consideration for each Scheme Share of which he is the holder at the Scheme Record Time, such payment to be made in accordance with clause 5.1.1.

8. The Effective Date

- 8.1 If the Court orders the sanction of this Scheme at the Court Hearing, a certified copy of the Court Order will be delivered to the Registrar of Companies. This Scheme shall only become Effective after a certified copy of the Court Order has been delivered to the Registrar of Companies for registration.
- 8.2 Unless this Scheme becomes Effective on or before 31 December 2015, or such later date, if any, as the Company and H&H may agree and the Panel and the Court may allow, this Scheme shall not become effective.
- 8.3 If the transfer of the A Ordinary Shares and the B Ordinary Shares pursuant to this Scheme does not become effective by 6.00 p.m. (London time) on the tenth Business Day following the Effective Date, or such earlier or later time and date as H&H and the Company may agree and the Company may announce through a Regulatory Information Service, the reclassifications effected by clause 1.1 shall be reversed and the A Ordinary Shares and B Ordinary Shares shall revert to and be reclassified as John Swan Shares, and the new Articles 160A and 160B adopted and referred to in clause 1.2 shall be deleted from the Articles.

9. Modification

The Company and H&H may, at any hearing to sanction the Scheme, jointly consent on behalf of all persons concerned to any modification of, or addition to, this Scheme or to any condition which the Court may approve or impose.

10. Governing law

This Scheme is governed by the law of Scotland and is subject to the jurisdiction of the Court.

Dated 26 August 2015