the declaratory action, I would also dismiss the plaintiffs' appeal. If this interlocutory appeal is taken to the House of Lords, it will be open to the plaintiffs to seek to have those words which have been deleted from the statement of claim restored. If after trial any party wishes to appeal, it might be thought that the case would be a suitable one for the leap-frog procedure. This, to some extent, would mitigate the expense of these unfortunately duplicative proceedings.

Fox L.J. I have had the advantage of reading in draft the judgment of Nicholls L.J. I agree with it, and do not wish to add to it.

*Defendants' appeals allowed.*
*Plaintiffs' cross-appeal dismissed.*

*Solicitors: Herbert Smith; Wilkinson Kimbers; Hamlin Slowe.*

B. O. A.

---

## *In re* SCANDINAVIAN BANK GROUP PLC.

[No. 006343 of 1986]

1986 Sep. 17; Oct. 1, 2; Dec. 10, 11, 12; 15

Harman J.

*Company—Capital—Foreign currency—Reorganisation of share capital—Denominated in different currencies—Whether multi-currency share capital lawful—Companies Act 1985 (c. 6), s. 2(5)(a)*

Section 2(5) of the Companies Act 1985 provides:

"In the case of a company having a share capital—(*a*) the memorandum must also . . . state the amount of the share capital with which the company proposes to be registered and the division of the share capital into shares of a fixed amount; . . ."

The petitioning company was a public company with an authorised share capital of £75 million divided into 75 million shares of £1 each of which 64,370,000 were issued and fully paid up. At an extraordinary general meeting the members unanimously passed a special resolution that the capital of the company be reorganised into shares denominated in different currencies. The resolution reduced the authorised capital to £10,694,370 by cancelling a similar proportion of the issued shares leaving 64,370 issued shares of £1 each so that the issued shares remained above the authorised mimimum for a public company of £50,000. Upon the reduction of capital taking effect, the unissued shares were to be cancelled and the 64,370

shares of £1 each were to be divided into 643,700 shares of 10 pence each. It was further provided that the share capital be increased to £30 million by the issue of shares of 10 pence each, U.S.$30 million by the issue of 10 cent shares, Sw.Fr.30 million by the issue of 10 Swiss centime shares and Dm.30 million by the issue of 10 pfennig shares.

On the company's petition for the court to sanction the reduction in share capital and approve the form of minute to be registered setting out the new multi-currency share capital:—

*Held,* approving the minute, that, although section 2(5)(*a*) of the Companies Act 1985 required "the amount" of the share capital and the "fixed amount" of the shares to be stated in monetary sums, there was no requirement that "the amount" of the share capital had to be a single aggregate sum and, therefore, provided a public company had the minimum issued capital of £50,000, it could also have amounts of share capital expressed in other currencies; that it followed that a company could issue shares of a fixed amount in foreign currency and, although the amount of the shares could only be expressed in the currency assigned to them, their value could be shown in the currency of the company's accounts in accord with variations in exchange rates (post, pp. 99D–F, 100C–D, 103F—104A, 106H—107E).

*Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443, H.L.(E.) applied.

*Adelaide Electric Supply Co. Ltd. v. Prudential Assurance Co. Ltd.* [1934] A.C 122, H.L.(E.) distinguished.

Dicta of Dillon L.J. and Sir John Donaldson M.R. in *Pattison v. Marine Midland Ltd.* [1983] Ch. 205, 212, 215, C.A. considered.

*Per curiam.* A liquidation account does not have to be expressed in pounds, but it does have to be translated into one single currency (post, p. 108A).

The following cases are referred to in the judgment:

*Adelaide Electric Supply Co. Ltd. v. Prudential Assurance Co. Ltd.* [1934] A.C. 122, H.L.(E.)

*Blue Metal Industries Ltd. v. Dilley* [1970] A.C. 827; [1969] 3 W.L.R. 357; [1969] 3 All E.R. 437, P.C.

*Chase Manhattan Bank Ltd., In re* (unreported), 21 January 1986, Harman J.

*Choice Investments Ltd. v. Jeromnimon* [1981] Q.B. 149; [1981] 2 W.L.R. 80; [1981] 1 All E.R. 225, C.A.

*Harris & Sheldon Group Ltd., In re* [1971] 1 W.L.R. 899; [1971] 2 All E.R. 87

*Lines Bros. Ltd., In re* [1983] Ch. 1; [1982] 2 W.L.R. 1010; [1982] 2 All E.R. 183, C.A.

*Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443; [1975] 3 W.L.R. 758; [1975] 3 All E.R. 801, H.L.(E.)

*Ooregum Gold Mining Co. of India Ltd. v. Roper* [1892] A.C. 125, H.L.(E.)

*Pattison v. Marine Midland Ltd.* [1983] Ch. 205; [1983] 2 W.L.R. 819, C.A.; [1984] A.C. 362; [1984] 2 W.L.R. 11, H.L.(E.)

*Rotaprint Plc., In re* (unreported), 21 July 1986, Hoffmann J.

*Simo Securities Trust Ltd., In re* [1971] 1 W.L.R. 1455; [1971] 3 All E.R. 999

*Welton v. Saffery* [1897] A.C. 299, H.L.(E.)

The following additional cases were cited in argument:

*Floor v. Davis* [1980] A.C. 695; [1979] 2 W.L.R. 830; [1979] 2 All E.R. 677, H.L.(E.)
*Reg. v. Local Government Board* [1901] 1 Q.B. 210, C.A.
*Secretan v. Hart* [1969] 1 W.L.R. 1599; [1969] 3 All E.R. 1196

PETITION

By a special resolution of the Scandinavian Bank Group Plc., duly passed in accordance with section 378 of the Companies Act 1985 at an extraordinary general meeting held on 26 August 1986, it was resolved that (1) with a view to the reorganisation of the capital of the company so as to consist of shares denominated in different currencies the capital of the company be reduced from £75 million divided into 75 million shares of £1 each to £10,694,370 divided into 10,694,370 shares of £1 each and that such reduction be effected by cancelling (a) 21,207,300 shares of £1 each registered in the name of Skandinaviska Enskilda Banken, (b) 17,348,964 shares of £1 each registered in the name of Bergen Bank, (c) 17,348,964 shares of £1 each registered in the name of Union Bank of Finland, (d) 6,430,563 share of £1 each registered in the name of Privatbanken, (e) 1,969,839 shares of £1 each registered in the name of Landsbanki Islands. (2) Forthwith and contingently upon the reduction of capital taking effect (a) the 10,630,000 unissued shares of £1 each be cancelled, (b) the 64,370 issued shares of £1 each in the capital of the company be subdivided into 643,700 shares of 10p each by the division of each share of £1 into 10 shares of 10p each (c) the capital of the company be increased to £30 million by the creation of 299,356,300 shares of 10p each, U.S.$30 million by the creation of 300 million shares of 10 cents each, Sw.Fr.30 million by the creation of 300 million shares of 10 centimes each and Dm.30 million by the creation of 300 million shares of Dm. 0.1 each. A form of minute was proposed in similar terms for the purpose of registering the new share capital.

By a petition dated 26 August 1986, which recited the special resolution and form of minute, the company prayed that the capital proposed to be effected by the special resolution might be confirmed and that the minute might be approved by the court.

The facts are stated in the judgment.

*Mary Arden Q.C.* and *Robin Potts Q.C.* for the petitioner. 1. The validity of the proposed increase of capital depends upon the true construction of section 121(2)(*a*) of the Companies Act 1985. The court is concerned with this because of the form of the minute. 2. As to section 130, this contains no provision for the conversion of share capital. This means that if premiums are received in foreign currency that foreign currency must be transferred to share premium account. The several multi-currency accounts within the share premium account must be translated into the currency of the accounts at the exchange rate prevailing on the balance sheet date. For balance sheet purposes the capital will fluctuate but this is only for balance sheet purposes.

[Reference was made to *Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443.]

There are two preliminary points—(a) Terminology. Translation is not the same thing as conversion. Translation is a book-keeping exercise to show the accounts in sterling. It is a question of valuation. Conversion involves actually selling foreign currency and buying another. In that case there is a change in the currency. (b) It is necessary to translate assets and liabilities into a single currency for the purposes of the accounts but that does not necessarily involve conversion: see *Pattison v. Marine Midland Ltd.* [1983] Ch. 205; [1984] A.C. 362, 372c–373d. (c) It is necessary to convert the claims of creditors in a liquidation into a single currency for the purpose of a liquidation: see *In re Lines Bros. Ltd.* [1983] Ch. 1. The position is quite different here. As between members of a company surplus assets are to be distributed between them in the manner provided in the articles or memorandum: see section 597 of the Companies Act 1985.

*In re Lines Bros. Ltd.* [1983] Ch. 1 and *Pattison v. Marine Midland Ltd.* [1983] Ch. 205 and [1984] A.C. 362 serve to demonstrate that in some circumstances it is necessary to have a single currency (this need not be sterling). But they also demonstrate that there is no overriding principle and that assets and liabilities must be in a single currency. The question whether one currency moves in relation to another arises only if the relative values have to be ascertained. This occurs if translation is required for the purposes of the accounts.

There is no obligation to retain monies subscribed in any particular currency. Shares subscribed in a foreign currency would be taken to be paid for in cash (section 738 of the Companies Act 1985) and see *Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443. If conversion is not required a sum in foreign currency is a fixed amount for ever and a day. £1 remains £1. $1 remains $1. Each is a fixed amount.

There are situations in the Companies Act 1985 where translation is required for example for the purposes of the accounts but the Act does not require expressly or by implication the maintenance or conversion of share capital in a single currency. [Reference was made to Dillon L.J. in *Pattison v. Marine Midland Ltd.* [1983] Ch. 205, 213.]

The question is whether the increase of capital is by the creation of shares of an "amount" for the purposes of section 121 of the Act of 1985. There is no text book assistance. Section 121(1) speaks of altering the conditions in the memorandum and that directs one back to section 2. In section 2(4) amount must include amounts and in section 2(5) amount can also mean amounts. [Reference was made to *Floor v. Davis* [1980] A.C. 695.]

The next inquiry is the meaning of the word "amount" in section 121. It must mean the same as "fixed amount" in section 2(5)(*a*). It means a share whose amount is made permanent and cannot be altered save as permitted by the Companies Acts. Alternatively, if "fixed" means "not fluctuating," a share is a share of a "fixed" amount if the nominal amount of the share does not fluctuate in relation to that share. See the dictionary definition of "fixed." The contrary view is that for shares to be of a fixed amount as required by section 2(5) the shares

must in addition to being of a permanent amount be shares whose values remain constant, i.e. whose nominal amounts do not fluctuate in value in relation to one another.

The contrary view confuses "amount" and "value." Value is only relevant where shares have to be translated or converted into a single currency. Value is not the word used in section 2(4). The contrary view also involves writing in words. The phrase "of a fixed amount" cannot be read as "of an amount which is fixed in value in relation to all other shares in the capital of the company."

There is no policy reason for rejecting multi-currency share capitals. Creditors are not worse off if the capital is expressed in different currencies. The contrary is in fact the case in these days of fluctuating exchange rates. Creditors are better off if currency risk is spread. If Parliament had wanted to prohibit multi-currency capital it would have done so more directly and by clearer language.

The contrary view takes no account of the function of the words "of a fixed amount" in the scheme of the Companies Acts (see sections 2(5)(*a*), 2(7), 100, 121, 135 and 502(1), (2)(*d*) etc, and the predecessor sections) as construed by the House of Lords in *Ooregum Gold Mining Co. of India Ltd. v. Roper* [1892] A.C. 125, 133, 134, 135–6, 139–40, 141–2, 144–5 and 148; see also *Welton v. Saffery* [1897] A.C. 299, 304–5, 307, 312, 321–4, 325–6 and 328–9.

In summary the expression "shares of a fixed amount" means shares each of a fixed amount or all of fixed amounts. In the context of the Act of 1985 the word "fixed" means made permanent: see the statutory history, *Ooregum Gold Mining Co. of India Ltd. v. Roper* [1892] A.C. 125 and *Welton v. Saffery* [1897] A.C. 299. If that be wrong then "fixed" means not fluctuating in relation to something else and must mean not fluctuating in relation to that particular share as a matter of construction. The contrary construction involves reading in words, confusing amount with value and has nothing to commend it in terms of legislative policy. It misconstrues the function of the words "of a fixed amount" in the context of the Companies Acts as interpreted by the House of Lords in *Ooregum* and *Welton*. See the numerous provisions in the Companies Act 1985 using the term "fixed" and to the instances in the Companies Act 1985 where it is necessary to ascertain a percentage of the aggregate nominal value of the share capital of a company. See also sections 89(1), 118, 130, 170, 221/2, 270, 352(3), 376(2), 553, 738(3)(4), 739(1), schedule 4 note (12) to the balance sheet formats and paragraph 58, and schedule 9, paragraphs 13 and 16. In relation to sections 5(2)(*a*) and 376(2), the court should in the case of a company having a multi-currency on single foreign currency share capital, follow the approach in *In re Simo Securities Trust Ltd.* [1971] 1 W.L.R. 1455; see also *In re Lines Bros. Ltd.* [1983] Ch. 1.

When the word "amount" is first used in section 2(5)(*a*) of the Companies Act 1985, it is a reference to an aggregate amount. This must be a quantity of money but it need not be an amount of money which is legal tender. It includes a fraction of a penny. There is no logical difference between a fraction of a penny and (say) a cent. Neither is legal tender in England. It is no objection to foreign currency

capital that judgment for the amount of a call would have to be converted into sterling.

There would be no difficulty in establishing the rights of the respective classes of shares in the company's articles of association. There is no reason why the articles should not provide for the distribution of surplus assets to members in different currencies.

There is no provision in the Companies Act 1985 which requires accounts to be drawn in any particular currency and it is not to be inferred from paragraph 58(1) of schedule 4 or paragraph 13 (16) of schedule 9 that a company's statutory accounts have to be in sterling: see *Pattison v. Marine Midland Ltd.* [1983] Ch. 205, 215, *per* Sir John Donaldson M.R.; compare Dillon L.J. at p. 212.

The dictum of Lord Wright in *Adelaide Electric Supply Co. Ltd. v. Prudential Assurance Co. Ltd.* [1934] A.C. 122, 150, must be read in context and must now be read subject to *Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443.

The Bank does not concede that the authorised minimum share capital of a public limited company has to be in sterling but if there is such a requirement it is satisfied in the Bank's case. [Reference was made to article 6 of the EEC second directive on Company Law. However that may be, section 118 of the Companies Act 1985 cannot be read as constituting an indication that a public limited company cannot have a multi-currency share capital. In any event only limited assistance can be obtained from section 118 as it does not apply to private companies. [Reference was made to *In Re Chase Manhattan Ltd.* (unreported), 21 January 1986, Harman J.]

*Potts Q.C.* following. Essential questions arise on section 2(5)(*a*) of the Companies Act 1985: (1) whether or not it is permissible for a company incorporated in Great Britain to have a share capital in a currency other than sterling (2) whether or not it is permissible for a company to have share capital in two or more currencies.

In the light of *Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443 the word "amount" where it first appears in section 2(5)(*a*) is apt to cover any figure in any currency. It is not necessary for the amount to be in legal tender as long as it is expressed as a fraction of a recognised unit of currency. Under the Interpretation Act 1978 singular includes plural and "the amount" can be read as "the amounts." The word "amount" does not have the concept of a total because the reference in section 2(5)(*a*) of the Act of 1985 to "a fixed amount" cannot refer to a total for a single share; amount here means quantity. The dictum of Lord Wright in *Adelaide Electric Supply Co. Ltd.* [1934] A.C. 122, 150, could no longer apply since the decision in *Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443 and it could therefore be concluded that an amount in any currency was an amount within section 118(1) of the Act of 1985. The authorised minimum of £50,000 in section 118(1) of the Act of 1985 may mean that "amount" or its equivalent in foreign currency and there is serious doubt that section 118(1) is linked to sterling. Section 376(2)(*b*) of the Act of 1985 is capable of being satisfied by translation of a sum of £100 into Dms at the date of requisition. If *Choice Investments Ltd. v. Jeromnimon* [1981] Q.B. 149 which applied

A the decision in *Miliangos* could construe "sum" as including foreign currency accounts then "amount" which is wider should be similarly construed. "Sum" is a word used also in section 376(2)(*b*) and in section 118(1) as to authorised minimum.

*Oliver Weaver Q.C.* for the Attorney-General as amicus curiae. Although there are no major questions on reduction the following points arise: (1) has the court jurisdiction to sanction any reduction and to B approve the minute setting out the share capital if it is satisfied that it is lawful to have more than one currency; (2) if there is jurisdiction should the court exercise its discretion by approving the minute. No difficulties are foreseen by government departments.

Starting with section 2(5)(*a*) of the Companies Act 1985, a fluctuating sum cannot be divided into shares of a fixed amount. Accordingly "the C amount" of share capital must be a fixed amount. That fixed amount must be measured in currency: *Ooregum Gold Mining Co. of India Ltd. v. Roper* [1892] A.C. 125. Note also section 738(4) "cash" includes foreign currency so shares must be in a fixed "monetary" amount. A single monetary amount can never be fixed unless measured in the currency yardstick in which it is denominated; 10 $1 shares are a fixed amount in relation to a dollar yardstick but not in a sterling yardstick. D Capital denominated in dollars is a fixed amount so long as the accounts are made up in dollars. Provided a company can make up its accounts in the same currency as that in which its share capital is denominated then the amount of share capital is fixed: *Pattison v. Marine Midland Ltd.* [1984] A.C. 362, 371 and [1983] Ch. 205, 209A–210F, 212D 214D–E, 215C which is authority for the necessity for the currency yardstick to be the E same as the currency of the share capital. The question as to whether capital had to be in sterling did not arise in *Adelaide Electric Supply Co. Ltd. v. Prudential Assurance Co. Ltd.* [1934] A.C. 122 because the capital was in sterling and in that respect the judgments were obiter.

It is clear from the statutory accounting requirements that a company has to make up accounts in a single currency and that currency has to be in the same currency as its share capital. It is only in that way that the F amount of its share capital can be fixed. It follows that if the unit of measurement of share capital is two different currencies when that amount is measured on a single yardstick (namely that in which the accounts are produced) the amount of both cannot be fixed; the amount of share capital denominated in currency which is not the yardstick accounting currency must fluctuate. Accordingly multi-currencies must G be in breach of section 2(5)(*a*) because one or other currency will not be fixed. Further if the currency yardstick adopted in single currency capital is not the same currency as the denominated capital then even single currency is not fixed.

On the meaning of "amount," see *Secretan v. Hart* [1969] 1 W.L.R. 1599 and *Reg. v. Local Government Board* [1901] 1 Q.B. 210, 214, 215, 216. On the true construction of section 2(5)(*a*) the words "the amount" H mean a single amount computed by reference to a single yardstick.

It is accepted that section 6(*c*) of the Interpretation Act 1978 applies unless a contrary intention appears which applies to all Acts post-1850: *Blue Metal Industries Ltd. v. Dilley* [1970] A.C. 827 is relied on to show

the principles upon which the Interpretation Act 1978 can be applied to the Companies Acts: see also *Floor v. Davis* [1980] A.C. 695, 703C–D, 704H–705D, 706B–E, 711–712, 715G.

The adoption of "amounts" for "amount" changes the whole character of legislation relating the raising and maintenance of capital and makes substantial parts of the Act of 1985 either unworkable or so different in width that it cannot have been intended by Parliament to have such an effect.

The cardinal principle is that a creditor is entitled to look to a fixed and certain sum to be available for payment of his claim (*Ooregum Gold Mining Co. of India Ltd. v. Roper* [1892] A.C. 125, 135–136, 145 and *Welton v. Saffrey* [1897] A.C. 299, 311, 312, 328) and unless fixed in sterling it will not be a fixed amount: see *In re Lines Bros. Ltd.* [1983] Ch. 1. Schedule 4 paragraph 58(1) of the Act of 1985 assumes that accounts shall be in sterling. The absence of reference to share capital in schedule 9 paragraph 13(16) shows that the draftsman did not envisage translation of that amount. Section 121(2)(*a*) of the Act of 1985 can only apply to shares being allotted in the same currency as issued. The requirement of one currency capital in section 2(5)(*a*) of the Act of 1985 cannot be altered by section 121(2)(*a*). The construction of the Act of 1985 considering the application of the Interpretation Act 1978 shows that the sections are strongly indicative of sterling as being the only basis on which the amount of share capital is determined.

[Counsel handed the following written propositions to the court in summary of this argument: (1) the amount of share capital must be measured by a yardstick; (2) that yardstick must be money; (3) that currency yardstick must be the currency in which the accounts are made up for the amount of share capital measured by it and shown in such accounts to remain fixed; (4) any share capital denoted in a currency not measured by the currency yardstick in which the accounts are made up must fluctuate; (5) accounts must be made up in one currency; (6) the accounts of an English registered company must be made up in sterling; (7) any departure from the amount of share capital being fixed by reference to a single currency yardstick involves a radical departure from the legislative policy relating to the raising and maintenance of capital. Counsel then proceeded to examine other sections of the Companies Act 1985 where multi-currency capital is permitted to see if this could have been the legislature's intention.]

If the amount of share capital is denominated in various currencies no determination of "the amount" of that capital can take place without a translation into one currency which may produce a different answer from day to day. It is surprising if the Act of 1985 gives a right to a participating percentage of holders on one day but takes it away the next day although there was no alteration in share capital at all. The class rights within section 5(2)(*a*) do not constitute a problem, such rights are not infringed because each currency share is a class: see also sections 45(6), 54(2), 125(*a*), 127(2). However section 142 does present a problem because the amount of called up capital will vary since the rate of exchange can differ from day to day. Under section 364(4)(*a*) if shares are in a different currency the directors' and connected persons'

proportionate interest in shares in the equity share capital will vary: see also section 368(2), 369(4)(*a*), 370(3). Under section 378(3)(*a*) how is it possible to decide whether the majority have 95 per cent. of the whole of the nominal value of the shares when one class may have 96 per cent. and the other class 94 per cent. Section 428 indicates that the nominal value can only be computed by use of a single yardstick whereas if multi-currency capital was allowed the yardstick must vary. The difficulty of applying section 428 is an indication that multi-currency capital cannot be allowed although it is accepted that the court would try to make it work: see *In re Simo Securities Trust Ltd.* [1971] 1 W.L.R. 1455 and also section 429. Under section 736(1)(*a*)(ii) which is a very important section concerning the definition of a subsidiary, in the case of multi-currency capital the company may be a subsidiary one day but not the next according to the vagaries of the exchange rate. In view of the enormous importance of determining whether or not a company is a subsidiary, Parliament could not have left such an important issue to be determined by the vagaries of a fluctuating exchange rate. Note also that it is difficult to find anything in the Act of 1985 pointing towards multi-currency capital: see section 170 by which it is necessary to maintain capital by transfer from the profit and loss account to the capital redemption reserve and section 352(3)(*a*)(ii) which does not envisage a translation requirement.

Section 553 makes it clear that calls can be made in currency in which the shares are denominated. But when a call is enforced by a judgment the enforcement will be in sterling which may not be the same amount by the date of enforcement as at the date of call. A third group of sections point to sterling as the only currency in which share capital can be determined. In section 117(2)(*a*) the phrase "authorised minimum" points to expectation that all companies will have capital in sterling and a public company has to have at least £50,000 sterling. Section 139 prohibits any reduction below the authorised minimum yet if the capital is in dollars and the rate of exchange falls this will result in an illegal reduction. Section 376(2)(*b*) indicates the expectation of share capital in sterling: see also Schedule 4, paragraph 58; Schedule 9, paragraph (3)(16) and Tables "A," "B" and "C."

The fact that the Act of 1985 recognises foreign currency as cash for purposes of paying up share capital is no indication of the lawfulness of foreign currency share capital: section 738(2)(4); consider also *In re Harris & Sheldon Group Ltd.* [1971] 1 W.L.R. 899 and *Welton v. Saffrey* [1897] A.C. 299. Article 6 of the second Council Directive (77/91/EEC), (Official Journal 1977 No. L.26, p.1) was made before the Companies Act 1980 and points against any currency other than sterling, referring to "national currency."

In accordance with advice the registrar of companies has accepted for registration companies with share capital other than sterling. He has also accepted increases in capital of registered companies by shares in different currency to that of the original capital. He will not accept for registration any purported conversion of shares from one currency into any other. As to single foreign currency the difficulties are: section 118 and the Directive. The official receiver has no problems with multi

currency in a liquidation because he simply follows *In re Lines Bros. Ltd.* and works in sterling. The Bank of England has no reservations. The Treasury's attitude is that from a prudential point of view the linking of foreign currency to capital will assist removing fluctuations. As to the Inland Revenue there is no comment. No difficulty is seen in calculating duty, so the view is that if the court is satisfied on jurisdiction there is no adverse view on discretion.

*Potts Q.C.* in reply. There is no requirement that (1) where a company decided to have share capital denominated in single units of account that it must be in sterling; (2) a company cannot have a share capital denominated in more than one unit of account; (3) statutory accounts must be in sterling.

Section 2 of the Act of 1985 is concerned with the contents of a company's memorandum not with any other declarations. It is not concerned with balance sheets, profit and loss accounts or annual returns nor with internal accounting records. The purpose is to let a reader of the memorandum to know certain facts. The word "amount" denotes of currency. It would be surprising if the "amount" were to be used differently in two places in section 2(5)(*a*) of the Act of 1985; it does not mean a total in either place. Just as share capital can be stated in the memorandum as being divided into preference shares and ordinary shares of different denominations so can it be stated in two or more currencies; in each case a reader can ascertain what the share capital is. The argument that the amount of share capital must be measured by a yardstick is eliptical. It is clear that for preparing accounts there must be a single yardstick but such does not amount to an alteration of capital. Section 118 refers to sterling but section 2(5)(*a*) refers only to amount. There is no requirement in section 121(2)(*a*) for a total to be shown. The word amount only refers to the amount of each share. As to percentages, a translation can be made without too much difficulty. It is accepted that a subsidiary may alter the position but that applies also to single currency share capital. On the basis that "amount" means the whole of the share capital is it necessary to total it up? If amount means quantity a reader of the memorandum must be able to know what constituted the share capital by adding up the items stated. This case concerns an increase in share capital; that within section 121(8)(*a*) "such amount" as may be expedient can mean foreign currency. As to permanent or fixed capital there was no change by reason of translation into another currency.

*Cur. adv. vult.*

15 December. HARMAN J. read the following judgment. I have before me a petition presented on 26 August 1986 by Scandinavian Bank Plc. ("the company"). The company changed its name by special resolution as certified by a certificate of incorporation on change of name dated 24 October 1986 by adding the word "Group" after "Bank" and the company is now Scandinavian Bank Group Plc. The company's petition was duly verified by an affidavit by Garrett Frank Bouton sworn

on 26 August 1986; he is and has for several years been the managing director and chief executive of the company.

As set out in the petition, the company was incorporated in 1969 as Scandinavian Bank Ltd., but was re-registered as a public company on 28 July 1986. As appears from the evidence, the company is a recognised bank, that is the Bank of England has granted the company recognition under the Banking Act 1979. Exhibit "G" to Mr. Bouton's affidavit was the published accounts of the company for the year to 31 December 1985. These show that the company's shares are held in varying amounts by five leading Nordic banks and that its total assets were then nearly £3.3 billion (I use the word "billion" in the sense of £1,000 million). Its growth has plainly been remarkable over its 16 year life. The petition sets out the company's authorised share capital starting at £3 million divided into 3 million shares of £1 each, increasing by seven successive steps to its present share capital of £75 million divided into 75 million shares of £1 each of which 64,370,000 shares have been issued and are fully paid-up.

On 26 August 1986 an extraordinary general meeting of the company was held on short notice. All the members of the company signed a consent to short notice and unanimously passed a special resolution that the capital of the company be reorganised so as to consist of shares denominated in different currencies. The means of the reorganisation was the reduction of the authorised capital from £75 million to £10,694,370. This reduction was achieved by the cancellation of similar proportions of the issued shares held by each of the five Nordic bank shareholders, leaving 64,370 issued shares of £1 each, making a total issued share capital of £64,370. The figure is of significance in relation to a public company such as the company, since by section 45(2)(*a*) of the Companies Act 1985 "the nominal value of the company's allotted share capital must be not less than the authorised minimum . . ." and by section 118(1) of the Act of 1985 "'the authorised' minimum means £50,000." Thus the company's allotted share capital after the cancellation of large parts of its issued share capital will remain above the "authorised minimum" for a public company.

The special resolution went on in part 2 to provide that contingently upon the above reduction of capital taking effect the 10,630,000 unissued shares be cancelled and that the 64,370 issued shares of £1 each be divided into 643,700 shares of 10p each by sub-dividing each of the £1 shares into 10 shares of 10p each. So far the proposals are entirely neutral transactions which would throw up large reserves on the left hand side of the company's next published balance sheet, but would alter its assets on the right hand side not at all. Each share would have become very much more valuable when considered as a fraction of the company's net assets, but the net asset value of each shareholder's holding would not have altered at all. As set out in paragraph 10 of the petition:

> "the proposed reduction of capital does not involve the return of any paid-up share capital, nor the diminution of liability in respect of unpaid capital."

The reduction does not affect creditors of the company at all.

It may be wondered why a petition for approval of a reduction of capital which, as so far set out, has no effect upon the world outside the company, is unanimously approved by the members of the company and involves merely a shifting of the position of figures on the left hand side of a balance sheet, without altering the totals at the foot thereof, should warrant an extended judgment. This court habitually considers petitions for the reduction of capital on Mondays in term time and, provided creditors are not affected and members do not object, such petitions are usually approved without any reasons being given by the judge. The machinery is familiar to company law practitioners and the specialist judges who have sat in this court.

This petition was presented by an extremely well known firm of City solicitors of the highest repute. It was called on before me in vacation, on special grounds, and argued by Miss Arden, who is as knowledgeable and skilled in this field as any judge could wish. However, Miss Arden's argument extended not only over the time available in vacation, but also on two further days at the start of the Michaelmas Sittings. The reason lay in paragraph 2(c) of the special resolution which provided that the capital of the company be increased to £30 million, U.S.$30 million, Sw. Fr.30 million, and Dm.30 million. Each of those four classes of shares, three of which are wholly new to the company, was divided into 300 million shares of respectively 10p each, U.S. 10 cents each, 10 Swiss centimes each and 10 pfennigs each. The minute which the court was asked to approve set out this new share capital in multi-currency form.

If the petition had sought merely the court's sanction of the reduction and approval of a minute referring to the reduced issued capital of £64,370 divided into 643,700 shares of 10p each that would have sufficed so far as formal statutory requirements go. The court's approval of the increase of share capital, and more particularly of its division into four separate currencies with 300 million shares in each currency, is not necessitated by the Act of 1985. In that sense it could be said that the increase of share capital is not a matter with which the court need be concerned. Under section 121(2)(*a*) of the Act of 1985, "a company may increase its share capital by new shares of such amount as it thinks expedient." Once the reduction of share capital to £10,694,370 of which £64,370 had been issued was approved, the company could then proceed to increase its share capital under that section. However, the company is, as I have said, a recognised bank, and the Bank of England is greatly concerned with supervision of such entities. The question whether a company can lawfully have a multi-currency share capital is plainly of vital importance to the company for the purpose of satisfying the Bank of England, and given the responsible way in which the company has conducted itself, and its resultant standing, the lawfulness of its desired share capital is plainly a matter with which it is properly concerned.

As is usual on petitions to sanction reductions where all the members are in favour and no creditor is affected, the petition, although advertised and in a sense inter partes, came on before me with only the company represented. Miss Arden took me to all the points which might be relevant to the question and endeavoured to call my attention to any

matters throwing doubt on the lawfulness of multi-currency share capital. However, the more I considered the admirable arguments advanced the more I felt that a point of considerable importance and public interest was involved. Since the company alone was represented it was obvious that if I was persuaded by the impressive argument advanced by Miss Arden, and approved the minute as asked, there was no prospect of any reconsideration of my decision by a higher court. It is also known among specialist company lawyers that eminent practitioners held opposing views and had advised clients to opposite effect as to the lawfulness of multi-currency share capital. All these considerations led me to follow the precedent set by Lord Brightman when sitting in the Companies Court as a judge of first instance (see *In re Harris & Sheldon Group Ltd.* [1971] 1 W.L.R. 899, 900) and invite the assistance of an amicus curiae. The Attorney-General responded by nominating Mr. Weaver, who has argued the point for the assistance of the court.

The requirements for the memorandum of a company having a share capital are set out in section 2(5)(*a*) of the Act of 1985:

> "the memorandum must also . . . state the amount of the share capital . . . and the division of the share capital into shares of a fixed amount; . . ."

When the petition was restored for further argument, after the nomination of an amicus curiae, Mr. Potts appeared with Miss Arden, since she was unfortunately prevented from attending the resumed hearing. Mr. Potts submitted to me that the word "amount" must have the same meaning wherever it appeared in the paragraph of the subsection. He also submitted that "amount" must mean an amount expressed in money. The word could not apply to "amounts" or quantities in other sorts of measure, e.g., the "amount" of the share capital could not be 100 troy ounces of gold, nor could it be one ton of potatoes, and the division into "shares of a fixed amount" would not be satisfied by providing that there should be 100 shares each of one troy ounce of gold, nor 160 shares each of one stone of potatoes. Mr. Weaver accepted and supported this argument. I am satisfied that it is correct and the subsection means that monetary amounts must be stated, both for the amount of the share capital and the fixed amount of each share.

The next question on the meaning of "a fixed amount" in section 2(5)(*a*) is whether the monetary amount has to be an amount in "lawful money," that is of an amount which can be paid in legal tender. Both counsel asserted that the requirement did not go so far. They cited the inconvenience and difficulty which would arise if all shares had to be expressed as a fixed amount of lawful money. Many companies had, in pre-decimalisation days, shares whose nominal amount was half-a-crown. That was simple to translate into shares of 12½p each decimal currency, which was an amount capable of payment in legal tender at the time. However, the ½p has recently ceased to be legal tender. It would be extremely inconvenient if all companies with 12½p shares had to alter the nominal amount fixed for their shares as a result of a change which had no bearing at all on the conduct of their business.

Further, some companies have shares with a nominal amount fixed at one ½p. In *In re Rotaprint Plc.* (unreported), 21 July 1986, an order was made by Hoffmann J. on a petition for the confirmation of a reduction of capital by Rotaprint Plc. approving a minute showing the share capital divided into shares of ½p each. That order was made after the abolition of the ½p as legal tender. It would be strange if the order was wholly impossible to make and when made was of no effect because a company could not have the nominal amount of its shares expressed except in amounts capable of legal tender. Finally, at least one public limited company quoted on the Stock Exchange has its share capital divided into shares of a nominal amount of 0.1p each, an amount which has never been legal tender. The generality of practice, it was submitted, showed that although "amount" meant monetary amount, it did not mean an amount capable of payment in legal tender. Again, I accept counsel's joint persuasions.

The question then turns to two points: first, do the words "the amount," using the definite article, where they appear in the early part of section 2(5)(*a*) require a single total amount to be stated in the memorandum. As Mr. Potts expressed it "Do the words require an aggregate to be stated?"; as Miss Arden expressed it, does the Interpretation Act 1978 apply so that the singular includes the plural and "the amount" can be read as "the amount or amounts?" Secondly, do the words "the amount" and the phrase "of a fixed amount," both read as meaning "monetary amount," require a monetary amount in English currency, or can an amount expressed in any currency satisfy the meaning of the words in the statute?

On the first point I certainly, until the argument on this petition, have assumed that "the amount of the share capital" meant a single aggregate sum. It is clear, as Miss Arden submitted to me, that a company may have its share capital divided into several different classes of shares, each of a different nominal amount; for example a company could well have a share capital of £1,000 divided into 250 preference shares of £1 each, 1,000 ordinary shares of 50p each and 1,000 deferred shares of 25p each. Such a structure would be entirely conventional. But the question is whether the assumption that a total or aggregate of a company's share capital has to be stated is correct. Miss Arden submitted that section 6(*c*) of the Interpretation Act 1978 applies "unless the contrary intention appears"; in the Act of 1985 no contrary intention appeared and accordingly, although the assumption had commonly been that one expressed a company's share capital in one total, yet there was in law no requirement that that be so.

The question whether a "contrary intention" appears in an Act of Parliament so as to exclude the Interpretation Act 1978 was considered by the Privy Council in *Blue Metal Industries Ltd. v. Dilley* [1970] A.C. 827. The New South Wales Interpretation Act was in similar terms to the Act of 1978, and the Act under consideration was the New South Wales Companies Act 1961. The point arose under a section closely analogous to section 209 of the Companies Act 1948, that is the power of an acquiring company to compulsorily buy-in the shareholdings of a dissentient minority which held less than 10 per cent. of the shares of

A the company acquired. The Privy Council delivered their advice to Her Majesty in a judgment of Lord Morris of Borth-y-Gest. The Board, upholding the decisions of both courts below, held that the references to "transferor company" in the section could only, in the light of the policy of the Act, refer to a single entity: see p. 853C–D. The Board further stated the general point that the Interpretation Act is a drafting convenience and is not to be used to change the character of legislation: B see p. 848C–E. If there appeared a clear policy in the sections of the Act of 1985 concerning share capital I would be greatly assisted by the decision. Unhappily for me the statute does not, in my judgment, show any clear policy in this part of the field of company law.

As was right, I was taken back to some of the early founding cases decided by the House of Lords on how share capital was to be dealt C with. In *Ooregum Gold Mining Co. of India Ltd. v. Roper* [1892] A.C. 125, the House decided that shares could not be issued at a discount to the nominal amount stated for such share. Lord Halsbury L.C. considered the words in the Companies Act 1862 which provided, in the forerunner of section 2(5)(*a*) of the Act of 1985, that the share capital was to be divided into shares of "a certain fixed amount." The modern words are "of a fixed amount," and before me it was submitted that the D word "certain" in the Act of 1862 had been omitted as merely tautologous. The Lord Chancellor held that the words quoted rendered it impossible for the company to accept anything for a share other than a liability to pay the fixed amount. He added, at p. 133: "The capital is fixed and certain, and every creditor of the company is entitled to look to that capital as his security."

E I was also referred to *Welton v. Saffery* [1897] A.C. 299. There the question was as to the liability of shareholders to pay up partly paid shares on a call made, not for the purpose of paying creditors, but for the benefit of members in a liquidation. The observation of Lord Halsbury L.C., at p. 305, was especially referred to as showing that "this artificial creature," (a company) "limited within its sphere of action by the statute under which it is created, can do [nothing] contrary to the F provisions of the statute." With that I wholeheartedly concur and I would always seek to apply that principle. The question here is "what do the provisions of the statute require."

Neither of these founding cases seems to me to assist much in resolving the present question. Mr. Weaver pressed me with Lord Halsbury's phrase in *Ooregum Gold Mining Co. of India Ltd. v. Roper* G [1892] A.C. 125, 133 that the capital is fixed and certain. How, asked Mr. Weaver rhetorically, can a creditor know what the capital is if it is expressed in a foreign currency? Further, and worse, said he, how can a creditor look to capital expressed in four different currencies which must vary in value one against the other; what can be "certain" or "fixed" about such capital? The answer from Miss Arden and Mr. Potts was that this was to confuse "fixed in amount" with "fixed in value." A fixed H amount meant a precise stated amount and had no reference to value.

I was taken by Miss Arden to the only observation directly upon the question of what currency can be utilised for expressing the capital of a company. In *Adelaide Electric Supply Co. Ltd. v. Prudential Assurance*

*Co. Ltd.* [1934] A.C. 122 the House of Lords considered the liability of an English company whose articles of association provided that dividends should be paid in Australasia. The House held that payment in Adelaide in Australian currency was a good discharge of the English company's liability to its English shareholders because the contract constituted by the articles so provided. Lord Atkin considered the question of currency at pp. 134–135. He observed, as it seems to me very accurately, that while both England and Australia were on the gold standard a pound in either country gave the same value and was the same pound. He also observed that he thought that at the time of the decision of the House the two "pounds" were no longer the same. However, he agreed with Lord Wright's observations with that reservation. Lord Warrington held that as a unit of account the pound was the same in both currencies and that the contract was discharged by payment in legal tender at the place where the payment was due, i.e. in Australia. He disregarded the fact, which he noted, that the rate of exchange between England and Australia was adverse to English shareholders, since the obligation was discharged in Australia. Lord Tomlin held, at pp. 142–143, that at the date of the contract there was no distinction between the English and the Australian pound and that therefore the payment made in discharge of the contact was to be made in local currency which was legal tender where the payment was agreed to be made, notwithstanding later changes to the currencies. Lord Wright held, at p. 155, that "the currencies of England and Australia are and were at all material times different currencies . . ." He thus differs in his reasoning, though not in the result, from the preceding speeches. However, there appears in Lord Wright's speech the following observations, at p. 150:

> "As the appellant company was registered in England, it is clear that its capital must be a fixed sum in British sterling . . . Similarly, all the returns and accounts required by the Companies Acts must have been rendered and kept according to the same currency."

Miss Arden, Mr. Potts and Mr. Weaver all submitted that this passage was an obiter dictum since the point did not arise for decision in the *Adelaide Electric* case. It is, however, an observation by a great lawyer and must be of great weight.

For myself I do not doubt that there was before and throughout the first half, of perhaps the first two-thirds, of the present century a usually unstated assumption that English companies must have their capital and draw their accounts in English currency. The pound had for so many years been properly called "a pound sterling"; that is a unit with a value in precious metal. Such a unit may fluctuate in internal purchasing power, but can be taken as having a stated value. But the United Kingdom went off the gold standard many years ago, and has ceased to have any fixed rate of exchange for the pound in any foreign currency since the collapse of the Bretton Woods Agreement in 1971. In these changed circumstances the law has had to adjust its perceptions so as not to cause injustice to individuals.

The House of Lords decided in *Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443 that the long established rule that an English court

A could only give judgment in what was called sterling, meaning pounds of Great Britain, should be altered. Judgment, it was held, could be given for a sum of money expressed in a foreign currency where the obligation under the contract sued upon was expressed in that foreign currency. The House recognised that the decision was a departure from a decision of the House itself, but that a new rule was needed to keep in step with commercial needs. Lord Wilberforce sets out, at pp. 462H–467D, the B reasons which led him to find a better rule. Lord Cross of Chelsea was of the same view (see pp. 497E–498B), as were Lord Edmund-Davies and Lord Fraser of Tullybelton whose speeches follow his. The decision has had far-reaching effects and is applied very frequently nowadays.

That decision was followed and applied in *Choice Investments Ltd. v. Jeromnimon* [1981] Q.B. 149 where it was held that a sum standing to C the credit of a judgment debtor at an English bank in a foreign currency deposit account was a "debt" within the meaning of the Administration of Justice Act 1956 and the County Courts Act 1959. It is, in my judgment, clear that had the question arisen in the late 1950s or during the 1960s no court would have so construed the word "debt" in an English statute. But the Court of Appeal unanimously so held, basing themselves on the reasoning in the *Miliangos v. George Frank (Textiles)* D *Ltd.* [1976] A.C. 443.

All this, submitted Miss Arden and Mr. Potts, pointed to the conclusion that Lord Wright's assertion in *Adelaide Electric Supply Co. Ltd. v. Prudential Assurance Co. Ltd.* [1934] A.C. 122 should no longer be accepted as correct. They submitted that the second point raised on the meaning of "amount" should be answered by saying that E an amount in any currency was an amount within section 2(5)(*a*) of the Act of 1985. Mr. Potts went on to assert that the meaning of the word "amount" in section 121(2)(*a*) of the Act of 1985 was a fortiori not limited to an amount in English currency. And, he submitted, if it be possible to increase share capital by adding shares expressed in a nominal amount of foreign currency, why should it not be possible to have an original share capital expressed in a foreign currency. In Mr. F Pott's submission the correct answer was that "amount" wherever it appeared in the statute could be read as meaning "any currency amount."

Mr. Weaver drew my attention in particular to section 117(3)(*a*) and section 118(1) of the Act of 1985 requiring a public limited company to have an authorised minimum issued capital of £50,000. He further drew G my attention to article 6 of the second Council Directive (77/91/EEC), (Official Journal 1977 No. L.26, p. 1). This Directive can be referred to as an aid to construction of the English statute, and to my mind does point to the conclusion that the requirement imposed by section 118(1) of the Act of 1985 can only be satisfied in pound terms. The references in the article to "national currency" seem to me to require member states to impose upon companies incorporated within them a minimum H share capital in their own currency. I do not think, however, that this requirement prevents or militates against the possibility that a company can have its share capital expressed in more than one currency, so long, in the case of a public company, as at least £50,000 of its share capital is

in sterling. However, the point does not directly arise on this petition since the company has and intends to have more than the required minimum of its share capital in pounds.

Mr. Weaver also called my attention to section 376(2)(*b*) of the Act of 1985 which specifies that requisitionists must be "not less than 100 members holding shares . . . on which there has been paid up an average sum, per member, of not less than £100." This, he suggested, was difficult to satisfy if the share capital held by some of the requisitionists was of nominal amount stated in a foreign currency. Miss Arden had anticipated this point and asserted that it was, first, mere machinery and the tail must not be allowed to wag the dog, and secondly that as in *In re Simo Securities Trust Ltd.* [1971] 1 W.L.R. 1455 the court had had to find in the absence of any clear guidance in section 209 of the Act of 1985, the most practical date on which to measure a holding so the court would have, and be able, to work out a way of determining whether requisitionists were of adequate standing.

Mr. Weaver also referred me to Tables "B", "C" and "D" as prescribed by The Companies (Tables A to F) Regulations 1985 (S.I. 1985 No. 805) and the references to pounds therein. However, he accepted that these were very slight pointers, although he submitted that they tended in the direction he was urging upon the court.

In my judgment, none of these pointers is a sufficient indication to determine that the law requires the capital of an English company to be in pounds. I should add that in *In re Chase Manhattan Ltd.* (unreported), 21 January 1986, where the company was a private company and so not within section 45(2)(*a*) of the Act of 1985, I myself sanctioned a reduction of capital in pounds to nothing and an increase in United States dollars. There was then cited to me Lord Wright's observations in *Adelaide Electric Supply Co. Ltd. v. Prudential Assurance Co. Ltd.* [1934] A.C. 122 and the decision in *Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443. Only one currency was proposed for the new share capital, and I then held that "amount" was adequately satisfied by a statement that the capital was so many thousand United States dollars, and that shares of U.S. $1 each were shares of a fixed amount.

Mr. Weaver also referred me, as had more briefly Miss Arden, to *Pattison v. Marine Midland Ltd.*, both in the Court of Appeal [1983] Ch. 205 and in the House of Lords [1984] A.C. 362. The decision concerned the taxation of profits alleged by the Inland Revenue to have been earned by the respondent bank. The House of Lords dealt with the problem very shortly. Lord Templeman's speech was assented to by all the other members of the House who took part; he held that although the taxpayer bank in its accounts from year to year had translated both dollar assets and dollar liabilities into pounds, yet, since the bank had never actually converted its dollar assets into pounds, nor vice versa:

> "There never was any loss or profit from the lending and borrowing and there never was any exchange profit because the company did not make any relevant currency conversions:" see p. 373

That decision is clear, easy to follow and has no effect on the point before me.

A However, in the Court of Appeal Dillon L.J. [1983] Ch. 205, 212, who is more knowledgeable in the field of company law than most and a most accurate speaker, held first that "It seems to me, however, that there never has been any *realisation* [my emphasis] of any profit at all . . . " and therefore no taxable profit. This entirely accords with Lord Templeman's ruling. However, Dillon L.J. added, at p. 212:

B > "It is a wholly unreal conception, in this day and age, that an English company can only carry on its business in sterling. Of course, an English company must convert into sterling the actual profits of its business activities carried on in other currencies. . ."

Those words indicate that an English company must keep its accounts in pounds. Griffiths L.J. made no such comment. Sir John Donaldson C M.R. however, said, at p. 215:

> ". . . I know of no commercial reason why the company's own profit and loss account should be expressed solely in sterling. This is certainly customary and may be a requirement of company legislation, although no one was able to refer us to any such provision."

D That observation does not support Dillon L.J.'s words. In my judgment one must always recall, in considering any judgment, that it is based upon the facts of the particular case and addressed to the problems specifically raised. In *Pattison v. Marine Midland Ltd.* the accounts of the bank were in fact drawn in sterling and the question of what basis was proper for accounts was not in issue. Much as I respect Dillon L.J.'s E opinion, I do not consider that his observation is very material to my decision in this case.

Mr. Weaver's main submission was not that an English company could not have a share capital measured by a foreign currency, and consequently shares fixed in amount by reference to a foreign currency, but that unless the currency in which the share capital was measured was F only one currency and that the accounts of a company were drawn in the same currency as that in which its share capital was expressed, the amount of each share would not be fixed. As I see it, this argument depends upon the words "fixed amount" meaning "of a particular and unchanging value." Mr. Weaver observed to me, echoing Lord Halsbury L.C. in the *Ooregum Gold Mines Co. of India Ltd. v. Roper* [1892] A.C. 125, that no creditor could look to the capital of a company with a G multi-currency share capital and know what was his security. As he rightly said, it would be necessary to translate the balance sheet of any company into one currency at the balance sheet date in order to compare like with like and to obtain a true and fair view, as required of accounts, of the assets and liabilities of the company. As Mr. Weaver said, it is necessary to have a measuring rod in order to draw accounts, and one cannot have two measuring rods used in one comparable H document.

True though that observation is, it does not seem to me to address the point here at issue. No one doubts that accounts must be drawn in one currency. It is probable that if a company has a multi-currency share

capital the auditors will translate the left hand side of the balance sheet into the one currency used for the accounts at rates of exchange ruling at the balance sheet date. Such an observation is equally true of the right hand side of a balance sheet. If a company holds assets in Japan, in India, in France and in the United States, but draws its accounts in English pounds, all of those assets will have to be translated into English pounds at the relevant rate of exchange at the balance sheet date. If such a process is proper for the right hand side of a balance sheet, or for a statement of assets in a narrative form of accounts, I cannot see why it is inappropriate on the left hand side, or for debits in a narrative form of accounts.

As it seems to me, the amount of the share capital, and the fixed amount of each share, is not altered by the figures appearing in the successive annual accounts of a company. The figures in the accounts are a translation, no doubt at rates stated in the notes to the accounts of real assets and real liabilities. The translation is necessary for purposes of comparison, but it does not alter or affect the true nature or amount of the underlying asset or liability. A loan of U.S.$1 million from a New York bank to an English company has to be repaid by payment of U.S.$1 million, although in two successive balance sheets drawn in pounds at 31 December 1984 and 31 December 1985 it would have appeared as a liability of about £925,925 (assuming an exchange rate of U.S.$1.05 to the £1 on 31 December 1984) and about £689,655 (assuming an exchange rate of U.S.$1.45 to the £1 on 31 December 1985). Such translation differences do not, in my judgment, alter the true amount of a company's indebtedness, nor do they amount to a conversion of the U.S. dollar liability into sterling. They are mere translation effects. If that company has always kept the $1 million which it borrowed in the United States and repays the $1 million out of those funds, it will not have made any profit or loss on its borrowings, notwithstanding the different figures in successive balance sheets.

I accept that although share capital appears on the left hand side of a balance sheet, yet it is not a true debit unlike borrowings by a company. A share represents a fraction of a company's net worth, as well as stating the nominal amount paid up on it, or for which the holder is liable to pay. But I reject the contention that a share has a value, in the sense of a monetary amount to which a shareholder is entitled, or upon which a creditor can truly look as a fixed sum in English pounds. There can be no doubt that the directors of a company can receive subscriptions for shares in a foreign currency—see section 738(4) of the Act of 1985 which provides that cash includes foreign currency and section 738(2) of the same Act which provides that receipt in good faith of a cheque is payment-up of the nominal amount (described as "nominal value") of any share. Those subscriptions in one foreign currency can at once be converted into another foreign currency, e.g., a subscription in U.S. dollars can be converted into a bank deposit in Swiss francs, by the directors of the company. Provided the objects of the company are appropriate, no creditor or shareholder could complain.

In my judgment, neither creditor nor shareholder is worse off if the payment-up of the share in U.S. dollars is attributed to a share

A denominated in U.S. dollars, rather than to a share in English pounds or a share in Swiss francs, and that notwithstanding that a company also receives subscriptions in those currencies for shares denominated in those currencies. In my judgment the words "the amount" in section 2(5)(*a*) of the Act of 1985 does not have to mean a single total amount where they are first used. I accept Mr. Potts' submission that the amount of the share capital is stated in the memorandum if on reading B through the relevant clause (usually clause 5) one finds that the amount is £X million sterling, U.S.$X million, and Sw.Fr.Y million. The memorandum does not have to state a single figure as a total of the share capital.

In my judgment, the amount of a share is a fixed amount if it is stated in the memorandum in monetary form. The fixed amount cannot C be stated in two currencies, i.e., a share of U.S.$1 or £1—but it may be stated in different currencies for different shares. Each share is and remains of a "fixed amount," notwithstanding that the exchange rates vary. To hold otherwise is to confuse "value" with "amount," and to hold that restating, for purposes of comparison, amounts of share capital as different sums according to different rates of exchange at successive year ends, would make the amount of each share "unfixed," is to D confuse the representation in the accounts with the actual nominal amount of a share for which a subscriber is liable. I do not accept that the reserve thrown up by alterations in accounts would be a reserve capable of application either before the Companies Act 1980 by way of dividend or now by capitalisation. To use the notional figure in that way would be to cause the accounts not to give a "true and fair view" of the E company's affairs. The very well known firm of chartered accountants who are the auditors to the company are confident that they can assess the accounts with a multi-currency share capital on the true and fair view basis. I am satisfied that no such distortion as Mr. Weaver envisaged could be the result of a variation in rates of exchange applied to a multi-currency share capital.

The most helpful evidence produced by Mr. Weaver from the F Registrar of Companies showed first that there are quite a large number, at least 125 companies, which already have foreign currency share capital, and probably two which have multi-currency share capital. The registrar's practice, based on advice, is that increases of capital under section 121 of the Act of 1985 will be accepted though in a different currency from that of the original share capital. The decision to which I G have come supports the registrar's course of conduct. I was told that no public authority, noteably the Bank of England and the Treasury, is concerned that a decision on the lawfulness of multi-currency capital such as I have reached will cause them problems, and the Official Receiver sees no difficulty in administering liquidations, although he expects, following *In re Lines Bros. Ltd.* [1983] Ch. 1, to draw the liquidation account of an insolvent company in sterling converted at H the date of the winding up. As Brightman L.J. put it, at p. 15E: "The accounts of a liquidator can only be expressed in a single currency." But that very learned judge expressed it thereafter on the basis that he was "*assuming* . . . that sterling is the currency of the liquidation" (my

emphasis). It follows that in my judgment a liquidation account does not have to be expressed in pounds, but it does have to be translated into one single currency. The Official Receiver's attitude is helpful in considering the exercise of my discretion to approve this petition.

In my judgment, Mr. Weaver was correct in saying that the point raised went to jurisdiction. I am satisfied for the reasons set out above that the court has jurisdiction to approve a minute referring to multi-currency share capital because such a form of share capital is lawful within the Act of 1985. As a matter of discretion, I am content to sanction the reduction, approve the minute as now proposed and direct advertisement as before in the same newspaper.

*Order accordingly.*
*No order as to costs.*

*Solicitors: Freshfields; Treasury Solicitor.*

[Reported by IAN SAXTON, ESQ., Barrister-at-Law]