NEUTRAL CITATION NUMBER: [2026] CIGC (FSD) 65

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 127 OF 2026 (DDJ)

IN THE MATTER OF SECTION 86 OF THE COMPANIES ACT (2026 REVISION)

AND IN THE MATTER OF LOGAN GROUP COMPANY LIMITED

Before:	The Hon. Justice David Doyle
Appearances:	Adam Al-Attar KC together with Jordie Fienberg of Campbells LLP for Logan Group Company Limited
Heard:	4 August 2026
Date of decision:	4 August 2026
Draft judgment circulated:	5 August 2026
Judgment delivered:	10 August 2026

Sanction of a scheme of arrangement pursuant to section 86 of the Companies Act (2026 Revision) – the 8 hurdles (1) compliance with convening order (2) statutory majority (3) fair and adequate representation (4) acting bona fide (5) scheme of arrangement for a permissible purpose and fairness of the scheme to an intelligent and honest person (6) absence of blots or defects (7) court not acting in vain (8) discretion – relevant law – general approach – specific issues – releases – long stop dates – modification clauses and indemnification – class composition issues – lock up agreements, consent fees, work fees and waiver of accrued interest – information to creditors – international dimension and utility

JUDGMENT

Introduction

1. On 4 August 2026 I made an order sanctioning a corporate scheme of arrangement. I now deliver a judgment containing my reasons for making such order.

2. Logan Group Company Limited (the "Company") sought the court's sanction of its proposed scheme of arrangement (the "Scheme") under section 86 of the Companies Act (2026 Revision) (the "Companies Act"). The Scheme was being proposed in parallel with another inter-conditional scheme of arrangement proposed by the Company in Hong Kong (the "HK Scheme"). On 26 June 2026 a convening order was made by the High Court of Hong Kong (Linda Chan J) in relation to the HK Scheme. The sanction hearing in respect of the HK Scheme has been listed for 13 August 2026 and the Scheme will only become effective if and when the HK Scheme is sanctioned.

3. Some of the background is outlined in convening my judgment delivered on 28 May 2026 neutral citation [2026] CIGC (FSD) 47 and I do not repeat it all again in this judgment.

The Voting

4. Of the 928 creditors present and voting 916 of them (98.7% by number, representing 89.3% in value) voted to approve the Scheme. I considered the detail of the voting results.

The Scheme

5. The basic purpose of the Scheme is to release the liability of the Company and the Existing Obligors in respect of the Scheme Debt. Certain other releases will also be granted. The Scheme Creditors' rights against the Existing Collateral are preserved.

6. The Scheme Creditors' claims amount to approximately US$11.9 billion in principal amount and comprise:

(1) The holders of the 12 series of the debt securities (the "Existing Securities") save for certain excluded holders;

(2) the lenders of several loans borrowed by the Company (the "Existing Loans");

(3) the lenders of several loans borrowed by the Existing Obligors and guaranteed by the Company (the "Existing Guaranteed Debts"); and

(4) various service providers who are owed outstanding fees by the Company (the "Existing Miscellaneous Liabilities")

(together the "Scheme Debt").

7. The Company is a primary and secondary obligor in respect of all of the Scheme Debt. Some of the Scheme Debt has been borrowed or guaranteed by one or more Existing Obligors. In addition, some of the Scheme Debt is secured by various security interests granted by companies which are not Existing Obligors (the "Excluded Collateral").

8. The Company has used a defined term the "Distribution Entitlement Amount" by reference to which the Scheme Consideration as defined will be allocated. Basically, the Distribution Entitlement Amount for each Scheme Creditor is defined as a sum equal to "A" minus "B" where (1) A is the outstanding principal amount of the Scheme Debt held by the relevant creditor (i.e. not including interest); and (2) B is the assessed value of any Excluded Collateral which secures the relevant Scheme Debt. The deduction of the assessed value of the Excluded Collateral is said to reflect the fact that the Scheme Creditors will be entitled to enforce the Excluded Collateral and apply the proceeds in discharge of their claims. Any dispute as to the assessed value of A or B will be resolved by a two-step adjudication mechanism set out in the Scheme.

9. The court has been provided with full details of the five options which in short summary are as follows:

(1) Option 1 consists of cash equal to 15% of the Distribution Entitlement Amount allocated to this Option with a cap at the increased amount of US$813 million.

(2) Option 2A consists of new asset-based securities (the "ALC Asset Trust Instruments") with a principal amount equal to 29.5% of the Distribution Entitlement Amount allocated to this Option with a cash payment equal to 0.5% of the Distribution Entitlement Amount. The cap is at US$1,020,339,000.

(3) Option 2B consists of new asset-backed securities (the "FIE Asset Trust Instruments (Option 2B)") with a principal amount equal to 99.75% of the Distribution Entitlement Amount allocated to this Option, plus 30% of the accrued and unpaid interest (excluding default interest and other special fees) in respect of the period up to 31 December 2024. In addition, a cash payment equal to 0.25% of the Distribution Entitlement Amount allocated to this Option. The cap is at US$573 million.

(4) Option 2C consists of new asset-backed securities (the "FIE Asset Trust (Option 2C)") with a principal amount equal to 99.75% of the Distribution Entitlement Amount allocated to this Option, plus 30% of the accrued and unpaid interest (excluding default interest and other special fees) in respect of the period up to 31 December 2024. In addition, a cash payment equal to 0.25% of the Distribution Entitlement Amount allocated to this Option. The cap is at US$673 million.

(5) Option 3 consists of mandatory convertible bonds ("MCBs") with an aggregate principal amount equal to 100% of the Distribution Entitlement Amount allocated to this Option. The MCBs are effectively equity instruments. There is no cap.

10. The options are subject to various conditions summarised in the Explanatory Statement at Part 2, Section 10.5 and the election mechanism is set out with default options for Scheme Creditors who do not make any elections.

11. In consideration for granting the releases, the Scheme Creditors will be entitled to receive various new instruments (the "Scheme Consideration"). The Scheme Consideration has been structured into the five "options" which the Scheme Creditors may elect between. This is designed to provide as much flexibility to the Scheme Creditors as possible.

12. The Company has various liabilities that will not be compromised by the Scheme, either because they will be restructured on a consensual basis or because there are liabilities owing to critical

suppliers and trade creditors. Some of these liabilities (the "Non-Scheme Claims") will be treated in the same way as the Scheme Debt (albeit on a consensual basis) and they will be given the same Options as the Scheme Creditors. The Non-Scheme Claims have a Distribution Entitlement of about US$126 million which is a relatively small amount when compared to the total estimated Distribution Entitlements of US$ 9 billion.

The comparator evidence

13. I considered the comparator evidence namely what would be the alternative if the scheme did not proceed. The estimated recoveries for the Scheme Creditors as against the Company and the other Existing Obligors are very low. In respect of recoveries from the Company, all of the Scheme Creditors will only receive recoveries of up to 4.04% (in the high case) and up to 2.95% (in the low case). In respect of recoveries from Existing Obligors (excluding the Company) these fall within a narrow range of 0.00 - 2.43% (in the high case) and 0.00 - 1.78% (in the low case). The evidence confirms that the expected returns under the Scheme are much better. Option 1 12.4%. Option 2A 11.4%. Option 2B if a Scheme Creditor is allocated FIE Asset Trust Instruments 41.9% - 42.0%, if a Scheme Creditor is allocated MCBs 30.1% - 34.1%. Option 2C if a Scheme Creditor is allocated FIE Asset Trust Instruments 28.5% - 29.4%; if a Scheme Creditor is allocated MCBs 30.1% - 34.1%. Option 3 30.1% - 34.1%.

The Law

14. I referred to some of the relevant law at [9] of my judgment in *China Aoyuan Group Limited* (FSD unreported judgment delivered 7 December 2023).

15. Section 86 of the Companies Act provides:

> "86. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application of the company or of any creditor or member of the company, or of a restructuring officer appointed in respect of the company, or where a company is being wound

up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) If a majority in number representing seventy-five percent in value of the creditors or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, as the case may be, and also on the company or, where a company is in the course of being wound up, on the liquidator and contributories of the company.

(2A) If seventy-five per cent in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all members or class of members, as the case may be, and also on the company or, where a company is in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) or (2A) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of association of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes a default in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine of two dollars for each copy in respect of which default is made.

(5) In this section the expression "company" means any company liable to be wound up under this Act and the expression "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods."

16. Section 86(2) of the Companies Act is similar to section 899(1) of the Companies Act 2006 (of England and Wales) which falls within Part 26.

The 8 hurdles

17. The caselaw establishes that there are 8 main hurdles that a company must jump if it is to get to the finish line of satisfying the court that it is appropriate to sanction a scheme:

(1) Has the company complied with the terms of the convening order? ("Hurdle 1")

(2) Has the requisite 75% statutory majority been achieved? ("Hurdle 2")

(3) Was the class of Scheme Creditors fairly and adequately represented by those who attended the Scheme meeting? ("Hurdle 3")

(4) Was the statutory majority acting *bona fide* and not coercing the minority in order to promote interests adverse to those of the class whom they purported to represent? ("Hurdle 4")

(5) Is the scheme a scheme of arrangement for a permissible purpose that is fair, in the sense that an intelligent and honest person, being a member of the class concerned and acting in respect of their interest might reasonably approve it (the "limited rationality test")? ("Hurdle 5"). The caselaw makes it clear that the scheme proposed need not be the only fair scheme or even, in the court's view, the best scheme. In commercial matters members or creditors are generally much better judges of their own interests than the courts. Courts should not unduly tinker with the details of the proposed scheme if satisfied that intelligent

and honest members of the relevant class acting in respect of their interests regard the substance of the scheme as fair

(6) Is there any blot or defect in the scheme which would warrant the court refusing to sanction the scheme? ("Hurdle 6")

(7) In the case of a scheme with an international element would the court be acting in vain if it sanctions the Scheme? ("Hurdle 7"). This hurdle involves consideration of whether, where necessary, the scheme will be recognised and given effect in other jurisdictions. If the scheme involves a foreign company there must also be a sufficient jurisdictional connection.

(8) As a matter of residual discretion is there any reason the court should refuse to sanction the scheme? ("Hurdle 8")

18. As Plowman J said 60 years ago now (in the year England won the football World Cup) the court does not sit merely to see that the majority are acting *bona fide* and thereupon to register the decision of the meeting but at the same time the court will be slow to differ from the meeting, unless either the class has not been properly consulted, or the meeting has not considered the matter with a view to the interests of the class which it is empowered to bind, or some blot is found in the scheme (Plowman J in *Re National Bank Ltd* [1966] 1 All ER 1006 at 1012, [1966] 1 WLR 819 at 829 by reference to a passage in *Buckley on the Companies Acts* (13th edition, 1957) page 409 which has been approved and applied by the courts on many subsequent occasions).

19. More recently Snowden LJ (now, much to the delight of the insolvency and restructuring world, Lord Snowden a Justice of the Supreme Court of the United Kingdom) in *Re AGPS Bondco plc* [2024] EWCA Civ 24, [2024] Bus LR 745 dealt with the "limited rationality test" to the majority vote by stressing that the court "does not impose its own view of the commercial merits of the scheme" and adding at [123]:

> "Almost invariably, under Part 26 of this question [the limited rationality test question] is answered by the very fact of the vote in favour at each class meeting. The confidence that the court reposes in the decision of each class meeting in such circumstances is reinforced by the fact that the decision in favour of the scheme is the decision of an enhanced majority

of 75% in value, rather than just a simple majority, of those who voted at the class meeting. Moreover, the greater the majority in favour at the class meeting, the greater confidence the court can have that the scheme is in the interests of the class in question."

20. Snowden LJ at [124] stated it was important to recognise that this entire approach is dependent upon a number of fundamental assumptions:

(1) that the class of creditors has been properly constituted: see [125];

(2) that no extraneous interest adverse to the interests of the class has been promoted: see [126];

(3) that the class has been "properly consulted" and for example there is no inadequate or misleading information in the explanatory statement or inadequate time to consider the proposal fully – see [127].

21. In addition to the Cayman and English jurisprudence there are three relatively recent judgments of the Hong Kong High Court which, like the Grand Court of the Cayman Islands, deals with a large number of significant schemes. I should make detailed reference to this important trio of cases as they are helpful in dealing with a number of issues which arise in this case. These cases involve the internationally well regarded judicial triumvirate of Justices Jonathan Harris, Linda Chan and Nick Segal who individually and collectively have an enormous amount of experience and expertise in respect of corporate restructuring.

<u>CIFI</u>

22. Last year, Harris J in *CIFI Holdings (Group) Co. Ltd* [2025] HKCFI 3250 at [28] applied *Re Add Hero Holdings Ltd* [2025] HKCFI 310; [2025] 1 HKLRD 870 and summarised the well-established principles the court should apply in considering whether to sanction a scheme. The formidable team of William Wong SC and Look Chan Ho acted for the company in that case.

Permissible purpose

23. At [30] in *CIFI* Harris J commented that the Scheme in that case represented a legitimate effort at debt restructuring for a distressed company, which is a permissible purpose.

Guarantors

24. At [32] Harris J commented that the discharge of third-party guarantors and principal obligors "is uncontroversial and permissible" and added that "The ancillary discharge in favour of third parties in connection with the Company's restructuring steps is also permissible".

Class Composition

25. At [33] onwards Harris J considered class composition.

Work fees and Advisers fees

26. At [38] onwards Harris J dealt with work fees of an ad hoc group of holders of the Existing Notes ("AHG") and advisers fees. In the case before him the final AHG Work Fee was estimated to be around US$62.85 million for a period of some 35 months. At [38] Harris J summarised the applicable principles:

(1) Generally, payments made by a company to some creditors independently of a proposed scheme and its associated restructuring agreements, which are not dependent upon the scheme taking effect, would not give rise to a class issue.

(2) Payment of work fees and other professional expenses is to meet expenses of the AHG, which is a common feature of restructurings. Formulating and negotiating a restructuring plan involves time and effort that deserves to be and is expected to be remunerated. Such fees are not a form of bounty or disguised consideration, but only to make sure the AHG is not out of pocket.

(3) Where the fees are offered to some but not all scheme creditors, the Court will need to form a view about the materiality of the fees when judging whether the rights of the creditors who will not be paid the fees are sufficiently dissimilar that they cannot consult together with a view to their common interest. In other words, if the fees are immaterial to the decision, the creditors can consult together.

(4) In evaluating the materiality of the fees, the Court would have regard to the fees in question by comparing the size of the fee to the predicted returns under the scheme, rather than simply comparing the percentage which the fee bears to the face value of the debt.

(5) A court needs to be quite cautious in evaluating whether fees paid to AHG are so high as to fracture a class.

27. At [40] Harris J commented that generally payments in respect of advisers fees do not fracture the class. However, it should not be taken as a rule or norm that such fees would be unobjectionable regardless of the amount.

28. At [42] Harris J in respect of the facts of his case commented that "Given the strength of the voting support of the Scheme [98.9% of Scheme Creditors in number, representing 92.66% in value], even if the AHG were to be put in a separate class, the voting outcome would remain the same and, therefore, although a significant consideration in the context of this case it is academic".

Third party guarantees and releases

29. From [44] onwards Harris J dealt with third party guarantees and releases. At [44] Harris J commented that the fact that some of the Existing Debts benefit from guarantees granted by third parties would not fracture the class. He added that "It is well-established that rights of the creditors against third parties (for example against guarantors for the company's debt) will generally constitute interests as opposed to rights; differences in interests may be relevant to the discretion to sanction the scheme."

Consent fees

30. At [47] and [48] Harris J dealt with consent fees. He stated that it is well-established that a modest consent fee available to all scheme creditors will not fracture the class composition. He added that in assessing the materiality of the fee, the court considers the size of the fee as compared to the projected returns under the scheme and in liquidation. In *CIFI* the level of consent fee was a "relatively modest" ((1) if acceded to the Restructuring Support Agreement before 27 October 2024 0.15% of their eligible restricted debt or (2) after the deadline but by 27 November 2024 0.05%) as compared to the estimated returns under the Scheme (14.6% to 36.6%) and the liquidation scenario (4.1% to 9.9%). Harris J held that the consent fees did not fracture the class.

Sufficiency of explanatory statements

31. At [51] Harris J helpfully summarised the well-established principles that govern the sufficiency of explanatory statements:

(1) The objective of an explanatory statement is to provide sophisticated creditors with sufficient information to assess the scheme and identify any further information they consider necessary to decide whether or not to support it, but be intelligible to an average creditor;

(2) Creditors are assumed to be intelligent and can be expected to read the explanatory statement as a whole. This is particularly so when the majority of the Scheme Creditors are sophisticated institutional investors;

(3) Where scheme creditors are sophisticated, provided that their attention is fairly drawn to the limitations in the financial information, those creditors may well be able to form their own view on whether what they have been given is adequate;

(4) A company is under a duty to include in the explanatory statement all the information necessary for creditors to decide whether the scheme is in their best interests or not. The extent of the information required will depend on the facts of the case;

(5) The duty extends to the Company providing up to date information, or an adequate explanation of why it has not been done so;

(6) Generally, a company will be required to provide information to support its predicted outcomes. The Court normally expects such views to have been independently verified by an insolvency practitioner or other suitable professionals;

(7) Even if there is a defect in the Scheme, the Court has a discretion whether to sanction it provided that the defect does not go to the jurisdiction of the Court to sanction the scheme. In exercising that discretion, the Court will naturally have regard to the materiality of the inaccuracy or omission.

32. At [53] Harris J stated that in a case of a significant work fee, such as in the case before him, "the explanatory statement must fairly and adequately explain the justification for the level of fees".

Intelligent and honest person test

33. At [55] and [56] Harris J dealt with the intelligent and honest man test.

International dimension

34. From [57] onwards Harris J dealt with the international dimension and the sufficient connection of the Company (incorporated under the laws of the Cayman Islands as many are in these Hong Kong scheme cases) with Hong Kong. Harris J at [60] set out the relevant principles as to the efficacy of a scheme as follows (footnotes omitted):

"(1) The guiding principle is that the Court should not act in vain or sanction a scheme that serves no purpose. It is not necessary for the company to show worldwide effectiveness or worldwide certainty. The Court will sanction the scheme provided it is satisfied that the scheme would achieve a substantial effect and will be effective in the key jurisdictions in which the company has assets or operates: *Re*

Add Hero at [95]; Re *China Singyes Solar Technologies Holdings Limited* at [18(3)(iv)].

(2) In practice, whether or not a jurisdiction is of practical importance to the efficacy of a scheme sanctioned in Hong Kong will commonly be determined by the following considerations:

(a) Is a material amount of debt to be compromised by a scheme governed by the law of a jurisdiction other than Hong Kong?

(b) Even if there is some doubt as to whether or not a scheme will compromise a proportion of the debt, is there any reason to think that the creditors will take action in a jurisdiction which will not recognize a scheme as compromising the debt?

(c) The amount of the debt involved. If, for example, the amount of debt is not governed by Hong Kong law is less than the cost of introducing a parallel scheme, it makes more sense to exclude the debt from the scheme and settle it separately if it is ever pursued.

See: *Re CA Cultural* at [32].

(3) The utility and international effectiveness of a scheme concerning a foreign company whose shares are listed on SEHK will not normally be of real concern to the Court if as is commonly the case (a) a large proportion of creditors are subject to the *in personam* jurisdiction of the Court, (b) their debts are governed by Hong Kong law, or that (c) the creditors have elected to participate in the scheme by the Hong Kong Court: *Re Powerlong* at [57] (Linda Chan J)."

35. At [62] Harris J added, in the context of some scheme claims being governed by New York law, that "Overwhelming Creditors' support of the Scheme can negate the need for formal foreign

recognition as the risk of adverse enforcement by a dissenting Scheme Creditor in the United States is remote …".

No blot or roadblocks

36. Harris J under the heading "No "blot" or Roadblocks" stated (footnotes again omitted):

> "63. As a final cross-check, the Court will also consider whether there is any blot or defect in the scheme which may hinder its operational effectiveness: *Re China Bozza Development Holdings Ltd* at [29].
>
> 64. It is a recognised practice in complex restructurings that schemes sanctioned by the Court would become effective only after a series of post-sanction steps occur. The Scheme is similar because the Restructuring Effective Date is conditional on a series of post-sanction steps to implement the Scheme, such as steps to issue and list the various debt instruments forming part of the Scheme Consideration. I am satisfied that the Company is likely to be able to satisfy these Restructuring Effective Date conditions. The present case is similar to *Re Sunac*, and the Court would not be acting in vain in sanctioning the Scheme."

<u>Fantasia</u>

37. The judgment of Linda Chan J delivered on 12 June 2026 in *Fantasia Holdings Group Co., Limited* [2026] HKCFI 3449 is also a very useful judgment in many respects.

Releases

38. Firstly, in respect of releases and carve-outs Linda Chan J at [32] did not consider the presence of releases of claims against third party obligors/guarantors objectionable as they were necessary to ensure the effectiveness of the scheme. Without these releases, the creditors would be able to pursue their claims against the obligors/guarantors who, in turn, would seek contributions from the Company. Linda Chan J added that "This would undermine the very purpose of the Scheme which

is to compromise and discharge the Creditors' Claims against the Company". In that case there were also qualified releases of various third parties including directors. The releases were subject to carve-outs to ensure that "any Claim or other Liability or cause of action against any Directors for breach of director's duties or malfeasance arising from or relating to any action, omission or other circumstance which are not under or in connection with the negotiation, preparation and/or consummation of the Scheme and/or the Restructuring" are preserved and will not be released. Linda Chan J commented at the end of [33] that: "This carve-out is consistent with the carve-out approved in *Re Yuzhou Group Holdings Co Ltd* [2025] 1 HKLRD 69 §17."

Long-stop dates

39. Secondly, in respect of long-stop dates Linda Chan J at [35] commented:

> "As with other schemes, sanctioned by the court, the Company has to demonstrate that RED [the Restructuring Effective Date] will occur within a reasonable period after the court sanctions the Scheme. This is to ensure that the period during which the Creditors will be bound by the Scheme [the Scheme will become effective on the date of registration of the sanction order at the Companies Registry] (and cannot take any enforcement action against the Company) but will not receive any Scheme Consideration Entitlement (which will only happen on RED) will not be uncertain or unduly long."

Modification clauses and indemnification

40. Thirdly, in respect of modification clauses and indemnification. At [39] Linda Chan J referred to a standard provision permitting the Company to consent to modification of the Scheme at any sanction hearing on behalf of the Creditors. Such a clause is "necessary for the purpose of implementing the Restructuring and should not have any material adverse effect on the interests of any Creditor as the modification is required by the court at the sanction hearing (see, for example, *Re Cine-UK Ltd* [2024] Bus LR 1944 §55)." At [42] Linda Chan J added: "In line with the approach sanctioned by this Court in *Re Country Garden Holdings Company Limited* [2026] HKCFI 1619, clause 10.7 of Scheme relating to indemnification of certain administrative parties has been amended to include a qualification "(to the extent that any such indemnification is otherwise

enforceable as a matter of applicable law)" to clarify the sanction of the Scheme does not render an otherwise invalid or unenforceable indemnity valid or enforceable."

41. Clause 9.5.4 of the Scheme Document was revised to make it clear that the releases were limited to those which related to preparation and implementation of the Restructuring. At [43(2)] Linda Chan J commented that the revised language was consistent with the language approved in *Re Yuzhou Group Holdings Co Ltd* [2025] 1 HKLRD 69 at [17].

Class composition issues

42. Fourthly, class composition issues. At [48] Linda Chan J stated:

> "In considering the issue of class, the question is whether the rights (as opposed to their commercial or other interests) of the Creditors before and after the Scheme are so dissimilar that they cannot form a single class. The court would adopt a broad approach and avoid giving unjustified veto rights to minority creditors …".

Lockup agreements, consent fees, work fees and waiver of accrued interest

43. At [53] Linda Chan J referred to the principles governing lock-up agreements and consent fees which had been explained by Snowden J (as he then was) in *Re ColourOz Investment 2 LLC* [2020] EWHC 1864 (Ch), [2020] BCC 926 at [93] – [98] and helpfully summarised them.

44. At [54] Linda Chan J dealt with the consent fee and at [55] onwards the work fee. At [56] Linda Chan J stated that "the relevant comparator is the returns under the scheme and in liquidation" rather than the debts to be compromised under the scheme or the debts owed to some of the scheme creditors [66(3)].

45. Linda Chan J felt that the work fee was material but pragmatically and, if I may say so with respect, properly concluded that as no creditor had raised any objection to the payment, whether on the ground of composition of class or any other ground, did not consider that the court should withhold

sanction on the basis that AHG should have been put into a separate class. Linda Chan J at [59] however put an important marker down for the future:

> "This, however, should not be taken as the court's acceptance that a work fee which the court consider to be material would not fracture the class. Had any creditor come forth to take the issue or that the level of support of the Scheme were lower, the result would have been different."

46. Linda Chan J dealt with waiver of accrued interest from [60] onwards. At [61(3)] the submission of the persuasive William Wong SC, who once again was leading the impressive Mr Look Chan Ho, for the Company to the effect that current judicial trends strongly resist the "unnecessary proliferation of classes". As the English authorities observe, "practical considerations" are relevant and "the court should not get 'too picky' about potential different classes, or 'one could end up with virtually as many classes as there are members of a particular group'" (*Re SWS Holdings Ltd* [2025] EWHC 2318 (Ch) at [46]). Mr Wong stressed that there was far more in the case before Linda Chan J that united the creditors namely the shared objective of avoiding a disastrous liquidation scenario. At [62] Linda Chan J concluded that "the waiver of interest does not create a class issue as the *same* treatment applies to all the debts owed to the Creditors notwithstanding the difference in the rates of interest under different instruments. This is not a case where the waiver of default interest only applies to some but not [all] creditors (cf. *Re Shimao Group; Re aCommerce Group Ltd* [2024] HKCFI 2216). Moreover, the Creditors have been provided with information regarding the current entitlements to interest and the amounts to be waived …[under] the Scheme. It is a matter for the Creditors to decide whether it is in their commercial interest to support the Scheme."

Information provided to creditors

47. Fifthly, Linda Chan J dealt with the information provided to creditors from [63] onwards and concluded that "comprehensive and sufficient information about the Restructuring and the Scheme", including the background to the Company and Restructuring, an explanation of the terms of the Scheme, risk factors, the liquidation analysis and the recovery analysis, had been provided.

International dimension and utility

48. Sixthly, Linda Chan J dealt with international dimension and utility from [67] onwards. At [73] reference was made to the parallel and inter-conditional scheme in the Cayman Islands.

Intelligent and honest person test

49. Seventhly, Linda Chan J dealt with the intelligent and honest man test stating:

> "*D4.2 Intelligent and honest man test*
>
> 74. The court would be slow to differ from the majorities' view as businessmen are much better placed than the court in assessing what is commercially advantageous to them (*Times China* §44).
>
> 75. The Scheme is one which an intelligent and honest man might approve. This is borne out by the overwhelming support at the Scheme Meeting. The near-unanimous approval demonstrates that the Creditors have concluded that the Scheme (and hence the Restructuring) is overwhelmingly preferable to the alternative scenario of liquidation. The Scheme is one which the court should in the exercise of its discretion sanction."

The general principles

50. Finally, in respect of *Fantasia* I refer to Linda Chan J's judgment at [44] where she helpfully set out in summary form the general principles as a matter of the law of Hong Kong as follows:

> "The principles are well-established [*Re Times China Holdings Ltd* [2025] HKCFI 3937 [31]]. At the sanction hearing the court will consider:
>
> (1) whether the scheme is for a permissible purpose;

(2) whether creditors who were called on to vote as a single class had sufficiently similar legal rights that they could consult together with a view to their common interest at a single meeting;

(3) whether the meeting was duly convened in accordance with the court's directions;

(4) whether creditors have been given sufficient information about the scheme to enable them to make an informed decision whether or not to support it;

(5) whether the necessary statutory majorities have been obtained;

(6) whether the court is satisfied in the exercise of its discretion that an intelligent and honest man acting in accordance with his interests as a member of the class within which he voted might reasonably approve the scheme; and

(7) if the company which puts forward the scheme is a foreign company, whether there is sufficient connection between the scheme and Hong Kong, and the utility of the court sanctioning the scheme."

Powerlong

51. Hard on the heels of Linda Chan J's judgment in *Fantasia* was Deputy Hong Kong High Court Judge Segal's judgment delivered on 3 July 2026 in *Powerlong Real Estate Holdings Limited* [2026] HKCFI 3836. The learned judge, a well-recognised international restructuring expert, had the benefit of submissions from the experienced Jose Maurellet SC. At the sanction hearing on 17 June 2026 no scheme creditors objected and no one appeared to oppose the Company's sanction application. The judge required an undertaking to enter into a waiver agreement and once received and approved he granted the sanction order.

Permissible purpose

52. Segal J at [47] concluded that the Scheme was to restructure the debts of the Company and this "was a permissible purpose of a scheme".

Class composition

53. At [48] Segal J noted that unlike the practice adopted in some other jurisdictions in Hong Kong the issue of class composition is determined at the sanction hearing (see *UDL Argos Engineering & Heavy Industries Co Ltd v Li Oi Lin* (2001) 4 HKCFAR 358 at [12]-[14]).

Default interest

54. At [62] onwards Segal J dealt with the default interest issue. At [69] Segal J stated that he was satisfied that the rights of the Scheme Creditors with an entitlement to default interest which is to be released by the Scheme and the resulting difference in entitlement to the Scheme Consideration are not so different from Scheme Creditors with a right only to ordinary interest so as to require that the default interest Scheme Creditors be permitted to deliberate separately.

Fees

55. At [71] onwards Segal J dealt with the applicable principles and the Court's approach to the assessment of the acceptability and impact of the Company assuming an obligation to pay fees incurred by Scheme Creditors and followed Linda Chan J's summary in *Re Times China Holdings Ltd* [2025] and her judgments in *Re Shimao Group Holdings Ltd* [2025] HKCFI 1751 and *Re Fantasia*.

56. Having reviewed the relevant authorities Segal J at [74] stated:

> "It is important to recognise that the relevant comparator is not the nominal and face value of the Scheme Creditor's principal debt under the Existing Debt Instruments but the projected and estimated returns under the Scheme and in a liquidation. The main question is whether the fees and payments offered are likely to affect and distort to a material extent a Scheme Creditor's decision to vote (is the amount offered an additional right under the Scheme which is offered only to a sub-set of the Scheme Creditors which induces their vote in support or is it otherwise unfair and discriminatory?)".

57. At [75] there was reference to a consent fee of 0.15% of the aggregate principal amount of their Eligible Participating Debt. Segal J noted that all scheme creditors were given the equal

opportunity to accede to the restructuring support agreement so as to avail themselves of the entitlement to receive the Consent Fee and the amount of 0.15% is not material when compared to the estimated return under the Scheme which was approximately 12.00% - 17.50%. The experienced international restructuring judge noted that there had been complete transparency as to the amount and terms of the Consent Fee and no objections had been made.

58. At [76] Segal J felt it appropriate to "adopt a more flexible approach in relation to work fees when the work done is genuinely helpful – and indeed on some occasions essential – to the restructuring process and the sums charged are reasonable and at a market rate."

59. As regards the Advisers Fees to the Ad Hoc Group and the Bank Group Segal J at [77] felt that although there had been increasing concerns in multiple jurisdictions at the level of advisers' fees in corporate restructurings involving schemes, the amounts charged in the case before him were "relatively modest" and the quantum of the Advisers Fees had been disclosed and there had been no objection:

> "Further, while the agreement to pay the fees incurred by some Scheme Creditors does constitute a distinct benefit conferred on them, it is important to take into account the fact that payment of fees represents reimbursement for costs incurred and the work done can be seen once again to be genuinely helpful – and indeed on some occasions essential – to the restructuring process. So it seems to me that the agreement of a scheme company to pay such fees does not fracture the class and is generally unobjectionable where there are no other groups of Scheme Creditors who have acted in a representative and helpful capacity who wish to be paid and where the amounts to be paid represent the genuine reimbursement of reasonable costs which have been properly incurred for the benefit of the group of Scheme Creditors concerned and to the restructuring process."

Longstop dates

60. In respect of longstop dates Segal J at [78] commented:

> "This is the Company's second scheme within a short period, and it is important to scrutinise the Restructuring Conditions to ensure that there is a realistic prospect of them

being satisfied before the Longstop Date (or that it is reasonable to assume that there would be a proper basis for extending the Longstop Date). If there was a material uncertainty that one or more of the conditions could be satisfied at all or in time it might be necessary to defer the sanction hearing until the position became clearer."

61. In *Powerlong* the restructuring effective date was on or before 30 September 2026. At [81] onwards Segal J deals with the NDRC condition, a common feature in most schemes proposed by companies whose primary business and operations are based in the Mainland, People's Republic of China. See *Re Shimao* at [20] per Linda Chan J and *Re Sunac China Holdings Ltd* [2026] HKCFI 68 at [32] per Harris J. At [84] Segal J refers to Harris J's comments in *Re Zhongliang Holdings Group Company Limited* at [40] to the final cross-check namely the court's evaluation of whether there is any blot or defect in the scheme that may hinder its operational effectiveness. Harris J referred to *Re China Bozza Development Holdings Ltd* where it was recognised that in complex restructurings schemes sanctioned by the Court typically take effect following a series of post-sanction steps. The Court needs to be satisfied that the company is likely to be able to satisfy the restructuring effective date conditions. The court must not act in vain in sanctioning a scheme.

62. At [86] Segal J in *Powerlong* noted that although the evidence was rather high level the overall conclusions were positive, he was able to conclude "that the Company has shown that it is likely to be able to satisfy these Restructuring Conditions within an acceptable timeframe."

Releases

63. Segal J then dealt comprehensively with the topic of releases. At [87] he referred to the judgment of Linda Chan J in *Re Yuzhou* at [343] and the need to justify releases. At [35] Linda Chan J refers firstly to releases which are necessary for the implementation of the scheme. At [36] Linda Chan J refers to releases which form part of the scheme between the company and the creditors. At [37] Linda Chan J referred to releases of the liabilities of the directors, officers, professional advisers and other third parties. Linda Chan J in effect noted that special care needs to be taken by judges when considering such proposed releases. At [39] Linda Chan J referred to releases of directors, officers and professional advisers from liability associated with the negotiation, preparation, and implementation of the scheme and comments that subject to the carving out of any liability arising from fraud, wilful default, gross negligence or wilful misconduct (which cannot be justified), such

release may be said to be reasonably necessary for the implementation of the scheme if the relevant person needs to take out additional insurance against any liability associated with the preparation of the scheme. In such scenario, it may be said that the releases reduce the risk and costs associated with the preparation of the scheme. At [40] Linda Chan J referred to releases of third parties for liability unrelated to the creditors' claims and commented that these types of releases are not permissible as they are not necessary for implementation of the scheme, and are no more than an attempt by the third parties to escape unrelated liabilities.

Liabilities

64. At [89] of *Powerlong* Segal J referred to an area of concern in that case namely the release of the liabilities of Northeast Gemini in respect of the Gemini Notes. Northeast Gemini was the principal obligor while the company was the guarantor. Segal J referred to the *dicta* of Harris J in *Re Unity Group Holdings Ltd* [2022] HKCFI 3419 at [16] – [17]. At [91] Segal J reached a pragmatic and, if I may say so, sensible conclusion albeit putting a marker down for future cases:

> "It seems to me that despite this concern, I can still sanction the Scheme in this case and rely on this occasion on Mr Justice Harris' decision and the fact that the release of Northwest Gemini in this case represents a non-material matter which has been clearly disclosed and to which no objection has been raised. However, this is an issue that may require further attention and review in future cases."

Modification clauses

65. Segal J at [92] – [94] dealt with modification clauses and referred to *Re Shimao*.

Additional rights

66. Segal J at [95] and [96] dealt with the additional rights given to the Ad Hoc Group under the Scheme and at [96] was satisfied that "in this case the rights given to the Ad Hoc Group, which has been identified in the ES and to which no objection has been made, do not give rise to class or fairness issues."

67. Segal J at [97] noted that some Scheme Creditors will retain rights under some security and against some Group companies and at [98] was satisfied that "in this case, disclosure having been clearly given and no objection having been raised, the differential treatment is not material and does not give rise to class or fairness issues."

68. Segal J at [105] dealt with the position in respect of the Pending Out-of Scope Debts, where there were ongoing negotiations with certain banks to restructure debts of approximately US$92.74 million and concluded:

> "While the failure to conclude these negotiations creates some uncertainty, the Company appears to be confident that they will be successfully concluded and there is no suggestion that there is a real and serious risk that they will not be and that such a failure could create a material risk to the effectiveness of the Scheme."

69. This area of the law is rich in judgments and I now make reference to some of the other well-known cases, insofar as they are relevant to the issues that were before the court in this case.

<u>Other authorities</u>

70. In *Re Noble Group Ltd* [2018] EWHC 2911 (Ch) and [2018] EWHC 3092 (Ch); [2019] B.C.C. 349 Snowden J (as he then was) dealt with the appropriate approaches of the English court at the convening hearing and the sanction hearing.

71. Snowden J held that the primary function of the court at the convening stage was to consider not the merits of the scheme but the proper formulation of the classes for the meetings. It was also appropriate to consider at that stage jurisdictional or other issues which would unquestionably lead the court to refuse to sanction the scheme. If the case concerned a foreign company outside England and Wales the question was whether it was liable to be wound up by the English court. The further questions of "sufficient connection" with England and whether the scheme would be "effective" in practice did not go to jurisdiction but to the discretion whether or not to sanction the scheme.

72. Snowden J referred to the four-stage test at the sanction hearing:

(1) First, whether the provisions of the statute had been complied with. This included class composition, whether the statutory majorities were obtained; and whether an adequate explanatory statement was distributed to creditors.

(2) Secondly, whether the class was fairly represented by the meeting, and whether the majority were coercing the minority in order to promote interests adverse to the class whom they purported to represent.

(3) Thirdly, whether the scheme was a fair scheme which a creditor could reasonably approve. The court was not, however, concerned to decide whether the scheme was the only fair scheme or even the best scheme.

(4) Fourthly, whether there was any "blot" or defect in the scheme that would, for example, make it unlawful or in any other way inoperable.

73. Snowden J at 391 referred to the explanatory statement and an addendum notice and at [40] stated:

> "… given the complexity of the restructuring documentation, the assessment of the materiality of some of the other amendments is an issue upon which, as a matter of reality, I am reliant on the company and its advisers to comply with their duties of full and frank disclosure. Those duties require them not only to identify any specific issues (and to provide what they contend are the answers), but also to identify for the assistance of the Court how any rival arguments might be put. I made a similar point in passing in a different context at [152] of the convening judgment".

74. At [152] Snowden J had stated that if there were no creditors in attendance "it shall be regarded as part of the role of counsel for the scheme company not only to identify the class issues and to provide what he or she contends are the answers, but also to identify for the assistance of the court how the rival arguments might be put."

75. In *Re Lehman Brothers International (Europe)* [2018] EWHC 1980 (Ch); [2019] B.C.C. 115 Hildyard J referred to a three-stage process in deciding whether to sanction a scheme:

(1) First, to establish that the relevant statutory provisions had been complied with.

(2) Secondly, to consider whether the class was fairly represented at the meeting, and whether the majority was coercing the minority in order to promote interests adverse to those of the class whom they purported to represent.

(3) Thirdly, to consider whether the scheme was one which a creditor might reasonably approve.

Even then, the court retained ultimate and unfettered discretion whether to sanction a scheme, and to withhold sanction if it considered there was nevertheless some overriding unfairness in the scheme in the manner in which it had been notified or explained, or in the event that some blot was found.

76. In *Re Colouroz Investment 2 LLC* [2020] EWHC 1864 (Ch); [2020] B.C.C. 926 Snowden J held that the words "compromise" and "arrangement" were to be given a very broad ambit. All that was really required was a degree of give and take between the company and the creditors.

77. Lord Millett NPJ in *Re UDL Holdings Ltd* [2002] 1 HKC 172 delivering a judgment in the Hong Kong Court of Final Appeal stated the position as a matter of Hong Kong law as follows at 184-185:

> "The following principles can be derived from this consistent line of authority:
>
> (1) It is the responsibility of the company putting forward a scheme to decide whether to summon a single meeting or more than one meeting. If the meeting or meetings are improperly constituted, objection should be taken on the application for sanction and the company bears the risk that the application will be dismissed.
>
> (2) Persons whose rights are so dissimilar that they cannot sensibly consult together with a view to their common interest must be given separate meetings. Persons whose rights are sufficiently similar that they can consult together with a view to their common interest should be summoned to a single meeting.

(3) The test is based on similarity or dissimilarity of legal rights against the company, not on similarity or dissimilarity of interests not derived from such legal rights. The fact that individuals may hold divergent views based on their private interests not derived from their legal rights against the company is not a ground for calling separate meetings.

(4) The question is whether the rights which are to be released or varied under the scheme or the new rights which the scheme gives in their place are so different that the scheme must be treated as a compromise or arrangement with more than one class.

(5) The court has no jurisdiction to sanction a scheme which does not have the approval of the requisite majority of creditors voting at meetings properly constituted in accordance with these principles. Even if it has jurisdiction to sanction a scheme, however, the court is not bound to do so.

(6) The court will decline to sanction a scheme unless it is satisfied, not only that the meetings were properly constituted and that the proposals were approved by the requisite majorities, but that the result of each meeting fairly reflected the views of the creditors concerned. To this end it may discount or disregard altogether the votes of those who, though entitled to vote at a meeting as a member of the class concerned, have such personal or special interests in supporting the proposals that their views cannot be regarded as fairly representative of the class in question."

78. It should be noted, in contrast to the position in Hong Kong, that under Practice Direction No 2 of 2010 of the Grand Court of the Cayman Islands at the convening hearing the court is expressly directed (paragraph 3.2) to consider whether it is appropriate to convene class meetings and, if so, the composition of the classes so as to ensure that each meeting consists of shareholders or creditors (as the case may be) whose rights against the company which are to be released or varied under the scheme, or the new rights which the scheme gives in their place, are not so dissimilar to make it impossible for them to consult together with a view to their common interest. Under paragraph 3.3 the court is also directed to consider any other issue which is relevant to the jurisdiction of the court and any other issue which is such that it would unquestionably lead the Court to refuse to sanction the scheme.

79. In *Re Heron International NV and others* [1994] 1 BCLC 667 Sir Donald Nicholls V-C in the English Companies Court held that the schemes should be confirmed since there was no good reason to depart from the views of the statutory majority. It was further held that although the information provided to creditors could on one or two grounds be fairly criticised, when further information was produced this information would not have caused any consenting creditor to have changed his view. At 675 the judge added:

> "I am concerned that the general body of creditors had sufficient information to reach a sensible decision on the pros and cons of the schemes. I must have regard to the practicalities of the situation."

80. In *Re Lombard Medical Technologies plc* [2014] EWHC 2457 (Ch), [2015] 1 BCLC 656 it was held that there was no requirement that, before the court could exercise its unfettered discretion to sanction a scheme of arrangement that had passed the jurisdictional threshold of approval by a 75% majority in value of creditors or members (as the case may be) at a scheme meeting, there had to be certainty about future events and it was acceptable for a scheme to contain a condition precedent which prevented it coming into operation unless that condition was satisfied.

81. Henderson J at [26] stated that it is not always required that an outstanding condition should be satisfied before the order is sealed:

> "I can see no objection in principle to the court sanctioning a scheme which is conditional in one or more respects, provided always that the court considers it appropriate to do so in the exercise of its discretion."

82. Amongst the examples Henderson J gave was the example of a scheme ceasing to have effect "if the steps contemplated are not taken before a specified long-stop date."

83. At [39] Henderson J stressed that "everything will always ultimately depend on the circumstances of the particular case".

84. Segal J in *Re China Agrotech* 2019 (2) CILR 356 at [35] found "the analysis and approach of Henderson, J. in *Lombard Medical* (2) to be completely convincing" and considered "it should be followed in this jurisdiction."

85. Segal J in *E-House (China) Enterprise Holdings Limited* (FSD unreported judgment 17 November 2022) at [121] referred again to the court's power to sanction a scheme subject to the satisfaction of conditions to implementation which are unsatisfied at the hearing date "and will do so where those conditions can reasonably be expected to be satisfied within a reasonably short time". Segal J added "the amended Longstop Date was in the near future and reasonable in the circumstances."

86. In *Shimao Group Holdings Limited* [2025] HKCFI 1751 Linda Chan J sanctioned a scheme on 13 March 2025. The longstop date was more than just a few months later namely 29 August 2025 and it could be extended with the consent of creditors holding more than 75% in value of the claim. It is true however that at the date of the sanction hearing the Company had substantially complied with the Restructuring Effective Date. Each case must be decided on its own facts and circumstances.

<u>Determination</u>

87. Having considered the relevant law I now turn to my reasons for concluding on 4 August 2026 that the eight hurdles had been successfully jumped by the Company to arrive at the end point of obtaining sanction from the court.

88. I considered the evidence presented to the court, the relevant law, the skeleton argument on behalf of the Company dated 30 July 2026 and the comprehensive and well focused oral submissions of Adam Al-Attar KC who appeared for the Company. I am grateful to Mr Al-Attar and his team, including Jordie Fienberg, for the valuable assistance they provided to the court with their first class written and oral advocacy.

89. I was satisfied that the Company had jumped all the necessary hurdles and that the court should sanction the Scheme pursuant to section 86(2) of the Companies Act.

Hurdle 1 – compliance with convening order

90. The Company had complied with the terms of the order I made on 28 May 2026. The third affirmation of Chen Yong affirmed on 29 July 2026 provided confirmatory evidence in that respect.

Hurdle 2 – statutory majority

91. The requisite 75% statutory majority had been achieved. Indeed in this case 98.7% by number representing 89.3% in value. I agreed with Mr Al-Attar that given that the Scheme affects a vast group of creditors with different commercial interests, the voting outcome is "very strong indeed". As Snowden LJ stated at [123] of *Re AGPS Bondco plc* the greater the majority, the greater confidence the court can have that the Scheme is in the interests of the class in question.

Hurdle 3 – fair and adequate representation

92. The class of Scheme Creditors was fairly and adequately represented by those who attended the Scheme Meeting. The turnout at the Scheme Meeting was relatively high. The Scheme Creditors were properly notified and consulted. I accepted Mr Al-Attar's submission that the Scheme was approved by Scheme Creditors with a broad range of interests. Moreover, the Scheme was plainly objectively beneficial to the Scheme Creditors. Sufficient information had been given to the Scheme Creditors to enable them to make a reasonable judgement as to whether the Scheme was in their commercial interests or not and there were no justifiable complaints in that respect. There had been proper consultation and adequate time to consider the proposal fully.

93. In some cases (see for example *aCommerce Group Limited* [2024] HKCFI 2216) the failure to provide sufficient and accurate information may lead a court to refuse sanction. In this case I was satisfied that adequate information had been provided and none of the sophisticated creditors suggested otherwise.

94. Explanatory statements appear to be becoming longer and more complicated by the day (such is perhaps the nature of modern commercial life) but there is nothing to suggest in this case that creditors did not fully understand the position and where necessary prudent creditors would no

doubt have taken advice as to their positions before the vote. The creditors in this case were sophisticated financial institutional entities well able to look after their commercial interests.

<u>Hurdle 4 – acting *bona fide*</u>

95. There was nothing to suggest that the majority were not acting *bona fide* or that they were coercing the minority in order to promote interests adverse to those of the class whom they purported to represent.

<u>Hurdle 5 – permissible purpose and limited rationality test</u>

96. The Scheme is a scheme of arrangement for a permissible purpose. The basic purpose of the Scheme is to release the liabilities of the Company and its Existing Obligors and in return the Scheme Creditors will be entitled to the Scheme Consideration. The Scheme plainly has a permissible purpose.

97. In respect of the limited rationality test, the Scheme was such that an intelligent and honest person, being a member of the class concerned and acting in respect of their interest, might reasonably approve it.

98. To a large extent the strength of the vote in favour spoke for itself.

99. As Smellie CJ (as he then was) stated in *Re SPhinX Group of Companies* 2014 (2) CILR 152 at [3]:

> "… the task of the court at the sanction stage is not to pass its own subjective judgment on the merits of a scheme. The court takes the view that in commercial matters, members or creditors are much better judges of their own interests than the court."

100. Segal J in *E-House (China) Enterprise Holdings Limited* (FSD unreported judgment 17 November 2022) at [113] stated:

> "… the Court is required to consider the relevant comparator to the Scheme. In the present case, the evidence shows that the Scheme is likely to produce or at least facilitate a considerably better recovery for Scheme Creditors than a liquidation".

101. The limited rationality test was satisfied. Furthermore in my judgment the Scheme was objectively beneficial to the Scheme Creditors and no Scheme Creditor had adduced any evidence to the contrary.

<u>Hurdle 6 – absence of blots or defects</u>

102. There was no blot or defect in the Scheme which would warrant the Court refusing to sanction the Scheme. I was content with the releases.

103. The Scheme provides for the release of the Scheme Creditors' claims against the Company, the Existing Obligors and the shareholders of Existing Obligors.

104. It appears to be established in English law that an "arrangement" can include the release of creditors' rights against third parties (*Re T & N Ltd* [2006] EWHC 1447 (Ch); [2007] Bus LR 1411 per David Richards J at [53]). The case law (including *Re Thames Water Utilities Holdings Ltd* [2025] EWCA Civ 475; [2025] Bus LR 2108 at [240]) establishes that third party releases are permitted where necessary in order to give effect to the arrangement proposed for the disposition of the debts and liabilities of the company to its own creditors.

105. In *Thames Water* the following was stated at [239]:

> "All of these cases involved releases given by *creditors* of the company, not by the company itself. The special feature of such releases is that they prevent the release of the claims by creditors against the company, which form a central part of the scheme or plan, being undermined by ricochet claims against the company in the event that the creditors pursued claims against directors or other third parties. There is no risk of such ricochet claims in the event that the company pursued claims against its own directors or advisers."

106. At [240] the English Court of Appeal accepted that "The risk of ricochet claims is not the only justification for the release of third parties …".

107. Mr Al-Attar said that a degree of complication arose in the present case because some of the Existing Obligors are principal debtors (e.g. borrowers) in respect of the Scheme Debt, and the Company is a guarantor. There is no risk of a ricochet claim by a principal debtor against the Company as guarantor – the position is the other way round.

108. To deal with this issue, the Company has executed a deed in favour of all Existing Obligors who are principal debtors in respect of the Scheme Debt. The deed operates to confer rights of contribution on the principal debtors against the Company, thereby creating the risk of a ricochet claim by them against the Company. Mr Al-Attar said that this creates a justification for releasing the Existing Obligors' liabilities as principal debtors in respect of the Scheme Debt.

109. On the face of it the risk of a ricochet claim has been created in a rather artificial and somewhat contrived way. In fairness, the Company openly recognises this but says that similar deeds have been executed in many cases and refers to the detailed discussion in *SWS Holdings Ltd* [2025] EWHC 2690 (Ch); [2026] B.C.C. 132. In that case I note that the deed did not amount to a blot on the proposed scheme. In *Re Gateway Guarantee Ltd* [2021] EWHC 304 (Ch); [2021] B.C.C. 549 Zacaroli J at [170] referred to a number of authorities "for the proposition that even if a transaction contains elements that are artificial, in the sense that they are designed solely to take advantage of a particular statutory provision, then that alone is not a reason to deny the transaction its legal effect provided it is not a sham". The English judge concluded as follows:

> "171. In the context of a plan under Pt 26A, the artificiality of the structure is undoubtedly an issue of direct relevance to the discretion to sanction the plan. It is possible to imagine uses of the co-obligor structure employed in this case that would be wholly objectionable. That might be the case where it unfairly overrode legitimate interests of creditors pursuant to the contracts governing their relationship with the primary obligor companies or under the system of law, including relevant principles of insolvency law, which applies to the relationship between them.

> 172. Similarly, there may be cases where the attempt to compromise plan creditors' rights against third parties was bound to fail because that compromise would not be recognised in any of the relevant foreign jurisdictions where it mattered.
>
> 173. The circumstances considered in the above two paragraphs would be principally relevant at the sanction hearing, although it is possible that in a given case the obstacles were so great and so clear that they would amount to a blot on the plan so that the court would refuse to convene meetings of creditors. I address that point below.
>
> 174. On the other hand, it is possible to envisage a case where the artificial structure is the only solution to enable a restructuring to be effected, all other possible alternatives having been explored and rejected for one or other reason of law or practicability; where the alternative is a value-destructive liquidation; and where the terms of the restructuring demonstrably benefit the affected creditors. In such a case, there would be a powerful argument that the artificiality of the structure should not prevent the company and its creditors being able to take advantage of the English scheme or plan jurisdiction."

110. In the sanction judgment ([2021] EWHC 775 (Ch); [2021] B.C.C 722 at [15]) Zacaroli J concluded that "This is just such a case".

111. Mr Al-Attar said that this is part of a broader principle that a company can take deliberate steps to access the restructuring tools available under the Companies Act for the benefit of its creditors. He referred to *Re Codere Finance (UK) Ltd* [2015] EWHC 3778 (Ch). In that case Newey J (as he then was) at [18] commented that what was being done in that case was "not in order to evade debts but rather with a view to achieving the best possible outcome for creditors. If in those circumstances it is appropriate to speak of forum shopping at all, it must be on the basis that there can sometimes be good forum shopping."

112. Mr Al-Attar also referred to the position in respect of the releases of the liabilities owing by Shannon Assets Designated Activity Company ("Shannon") and a deed poll recently executed by the Company and said that similar deed polls have been used in many other cases and cited *Re Gategroup Guarantee Ltd* [2021] EWHC 34 (Ch); [2021] B.C.C. 549 as an example.

113. I agreed with Mr Al-Attar that in the case presently before this court, there was a good commercial justification for the deed poll (the execution of which was requested by a group of the Shannon Noteholders). The deed poll is not designed to evade debts or prejudice anyone, and the release of Shannon will simply facilitate an orderly distribution of the Scheme Consideration to the Shannon Noteholders.

114. Mr Al-Attar also noted that the Scheme provides for what he described as the "customary release" of the Company's directors and professional advisers (as well as various other advisers and persons involved in the negotiation of the restructuring) from any liability arising out of the negotiation and implementation of the restructuring, and from any historical liability relating to the Scheme Debt. Only those claims against the directors and advisers which relate to the Existing Debt Documents and the negotiation and execution of the Scheme will be released. Claims against advisers for breaching a duty of care under any written agreement will not be released. Any liability for fraud is also excluded from the scope of the releases. Mr Al-Attar said that such releases are common provisions to include in a scheme and cited Snowden J in *Re Noble Group Ltd* [2019] BCC 349 (sanction judgment) at [24] to [25] and Smellie CJ in *SPhinX Group of Companies* 2014 (2) CILR 131 in support.

115. In *Thames Water* there was no risk of any ricochet claim by the directors against the company. In our case there is (see Article 164(1) of the Company's Articles of Association which confers an indemnity on the directors and Cayman does not have the equivalent to section 232 of the Companies Act 2006 of England and Wales). Mr Al-Attar stressed that no claims have been

threatened against any relevant persons and the Company is unaware of any grounds upon which a claim might be threatened. Nevertheless, a release is required in order to ensure that the Scheme is not undermined by a claim against a relevant person which could in turn trigger a ricochet claim against the Company.

116. In my judgment there was no blot or defect in the Scheme that would warrant the court refusing to sanction the Scheme.

Hurdle 7 – court not acting in vain

117. The Scheme does have an international element. In particular, it is inter-conditional on a parallel scheme in Hong Kong. I noted the key jurisdiction where the Company's assets are located and was satisfied at the sanction hearing, as I was at the convening hearing (see [25] of my judgment, neutral citation [2026] CIGC (FSD) 47), that the court would not be acting in vain. There was nothing that led me to the view that the Scheme will not have international effectiveness where necessary. I was satisfied that, subject to sanction in Hong Kong, the Scheme will achieve its permissible purpose.

Hurdle 8 - discretion

118. As a matter of residual discretion there was no reason why the court should refuse to sanction the Scheme.

Various specific issues

119. I was satisfied that sanction should be granted in this case. There were however various other specific issues I should comment upon.

Issues raised by Linda Chan J at the Hong Kong convening hearing

120. At exhibit CY-3 there appears an undated transcript of the convening hearing before Linda Chan J on 26 June 2026 which I have carefully considered. In that case the eloquent Eva Sit SC appeared for the Company. Linda Chan J raised various issues some of which she stated would have to be dealt with at the sanction hearing which is due to be held in Hong Kong at 10am (Hong Kong time) on 13 August 2026. The issues raised by the Court included the following:

(1) the treatment of accrued interest;

(2) impact of work fees;

(3) the longstop date.

121. Mr Al-Attar KC dealt with the first two issues comprehensively in his skeleton argument and in his oral submissions. I did not think any of these issues prevented this court from granting sanction.

Accrued interest issue

122. I remained of the opinion that the treatment of accrued interest did not justify any fracturing of the class. I have little of substance to add to the paragraphs in my *ex tempore* judgment delivered on 28 May 2026 when I dealt with this issue.

123. In respect of interest all Scheme Creditors are treated in the same way although differences in the quantum of accrued interest may give rise to different commercial outcomes from creditor to creditor but I agreed with Mr Al-Attar that this was not a basis for fracturing the class. It would be wrong to fracture the class simply to reflect the fact that each Scheme Creditor has a unique interest-to-total-claim ratio.

124. There are Scheme Creditors to whom default interest is payable on the one hand and on the other hand to whom default interest is not payable but again I agreed with Mr Al-Attar that this was not a good reason to fracture the class. It is true that default interest will not be taken into account when allocating the Scheme Consideration (including for the purposes of Options 2B and 2C) but this restriction applies to all Scheme Creditors equally.

125. In my judgment as a matter of principle, it would have been wrong to constitute a separate class of creditors to whom default interest is not payable as this would involve a form of class proliferation that the authorities caution against.

126. I should add that the Scheme was very strongly supported by Scheme Creditors with different interest-to-total-claim ratios. There was plainly more to unite than divide them. The fundamental choice was between taking their chances in a liquidation or to approve a rescue and receive some consideration in exchange for the release of debt. I agreed with Mr Al-Attar that in making that choice it was entirely possible for the Scheme Creditors to consult together in their common

interest. I also obtained some comfort from Segal J's comments in *Powerlong* at [50e] and [62] to [70]. The difference was not so material as to prevent the creditors consulting together.

127. Snowden J in *Re Global Garden Products Italy SpA* [2016] EWHC 1884 (Ch); [2017] B.C.C 637 at [43] stated:

> "The test for correct constitution of classes is well-known and was considered in *Re Hawk* (above) and in *Re UDL Holdings Ltd* [2001] HKCFA 19; [2002] 1 H.K.C. 172 at pp.104-105. In summary, the question is whether the rights of the relevant creditors against the scheme company are not so dissimilar as to make it impossible for them to consult together with a view to their common interests. This test requires consideration both of the rights of the creditors against the company in the absence of the scheme and any new rights to which the creditors will become entitled under the scheme. The authorities emphasise that the class test is concerned with rights, not with interests."

128. In my convening judgment [2026] CIGC (FSD) 47, having considered the evidence and the submissions of Mr Al-Attar I was satisfied that a single class was appropriate. I remained of that opinion having considered further evidence and argument. Mr Al-Attar also reminded me of the comments of Snowden J in *Re Global Garden Products Italy SpA* [2016] EWHC 1884 (Ch); [2017] B.C.C 637 at [43]:

> "As regards the correct constitution of classes, I accept the point made by Mr Dicker that if a judge has heard full argument at the convening hearing and has decided on the appropriate constitution of classes, it is not ordinarily appropriate for a different judge at the sanction hearing to take a different view of his own motion in the absence of any creditor appearing to contend that the classes were not correctly constituted. That was the view expressed by the Court of Appeal in *Re Hawk Insurance Co Ltd* [2001] EWCA Civ 241; [2002] B.C.C. 300 at [21] and was reinforced by the terms of the subsequent *Practice Statement* to which I have referred."

129. I saw no good reason at the sanction hearing to alter my findings on class composition made at the convening hearing.

The work fees issue

130. I also remained of the opinion that the work fees payable to the Ad Hoc Group did not fracture the class. I have little of substance to add to [34] and [35] in my judgment delivered on 28 May 2026. The work fees in this case did not fracture the class. I agreed with Mr Al-Attar that even if the Ad Hoc Group had been placed into a separate class, the Scheme would have been overwhelmingly approved by the requisite statutory majority within both classes. I also noted that in any event given the concerns expressed by Linda Chan J the Company engaged in further discussions with the Ad Hoc Group to consider whether there was scope to reduce the quantum of the work fee by agreement and negotiations have now concluded and resulted in a reduction of the work fee. All but one of the members of the Ad Hoc Group agreed to reduce the remaining work fees payable on the Restructuring Effective Date from 1.0% to 0.4% (i.e. a reduction of 0.6 percentage points). This was disclosed to the Scheme Creditors in the Supplementary Explanatory Statement.

The longstop date issue

131. Mr Al-Attar did not in his skeleton argument deal with Linda Chan J's concerns in respect of the longstop date, but at the request of the court dealt with the issue in his oral submissions.

132. Chen Yong in his third affirmation affirmed on 29 July 2026 ("Chen 3"), makes reference to the concern expressed that the longstop date (being 31 March 2027, subject to an automatic extension mechanism to 30 June 2027) was too long (paragraph 9.4). In an endeavour to deal with this concern the Company revised the definition of longstop date in the Updated Explanatory Statement issued to Scheme Creditors on 2 July 2026 to remove the mechanism by which the longstop date could previously be automatically extended to 30 June 2027 on the Company's own notice that it had not yet obtained all necessary approvals, pre-approvals or other consents required to implement the Restructuring, and to provide instead that any extension to the longstop date beyond 31 March 2027 requires the approval of the Majority Scheme Creditors (now being 75% rather than 50% as previously set out) in value of the aggregate principal amount of the Scheme Claims (as at the Record Time) held by all Scheme Creditors or approval of the Court. The revised longstop date has been approved at the Scheme Meeting by the requisite statutory majority.

133. The evidence before the Court is that the Company will be able to satisfy the Restructuring Conditions prior to the longstop date and accordingly they do not constitute a roadblock to the sanction of the Scheme.

134. Mr Al-Attar referred to the evidence in the first affirmation of Chen Yong affirmed on 10 April 2026 ("Chen 1") which dealt with the Restructuring Conditions. There is reference to the need to obtain the approval of the National Development and Reform Commission of the People's Republic of China and the approval of shareholders in respect of the issuance of the MCBs. At paragraph 40.4 of Chen 1 there is reference to the fact that the EGM circular cannot be circulated until at least 2 to 3 months after the Scheme Effective Date when the Scheme Creditors' elections are determined. At paragraph 39.2 it is stated that the Scheme Creditors' deadline for indicating their options falls around 2 to 3 months after the Scheme Effective Date. Mr Al-Attar also referred to paragraph 12.1 of the second affirmation of Chen Yong affirmed on 22 May 2026 which provided an updated timetable and paragraph 49 onwards of Chen 3 which dealt with the satisfaction of the Restructuring Conditions before the longstop date.

135. The creditors did not seem unduly concerned with the longstop date. The vast majority voted in favour of the Scheme and not one creditor raised any issues in respect of the longstop date. No creditor caused an appearance to be entered at the sanction hearing to oppose the sanctioning of the Scheme.

136. I was satisfied that the issues in respect of the longstop date did not prevent this court from sanctioning the Scheme.

Luso Bank

137. I should record, for what it is worth, that I considered the letter dated 16 July 2026 from Withers who act for Luso International Banking Limited ("Luso Bank"). There was no appearance on behalf of Luso Bank at the sanction hearing and no evidence or written submissions filed on their behalf in the Cayman proceedings. At paragraph 4 of the letter it is stated that Luso Bank has filed the affirmation of Wu Jiangning dated 25 June 2026 and has instructed counsel to file skeleton submissions in HCMP 605 of 2026 but apparently not in FSD 127 of 2026 (DDJ), the place of the

incorporation of the Company. I also note the response dated 20 July 2026 from White & Case. In summary it is stated that "the Schemes do not operate unfairly or prejudicially against your client".

138. I also noted what Mr Al-Attar had written in his skeleton argument at paragraph 71. The quantum of the disputed debt was very small in comparison to the total amount of the Scheme Debt (circa 0.1%). The dispute is presently the subject of proceedings in Macau. The Scheme will have no impact on the Macau proceedings.

139. Luso Bank appeared concerned that if it voted that could amount to a concession that it is a creditor of the Company. Again I agreed with Mr Al-Attar that the short answer to the question is that, by voting on the Scheme or electing between Scheme Options, Luso Bank will not be making any concession that it is a creditor of the Company. Paragraph 2.3(h) of the Solicitation Packet makes it clear that notification of claims admitted for voting purposes "does not (of itself) constitute an admission of the existence or amount of any liability of any member of the Group" and paragraph 2.3(j) it is made clear that the admission and valuation of any Voting Scheme Claim for voting purposes does not (in itself) constitute an admission of the existence or value of any Voting Scheme Claim and will not bind the Company or the Scheme Creditor for any purpose other than voting at the Scheme Meeting(s).

140. The position of Luso Bank did not lead me to the conclusion that I should not sanction the Scheme.

The position of China CITIC Bank International Limited

141. In my convening judgment ([2026] CIGC (FSD) 47 at [40] to [44]) I made reference to the position of China CITIC Bank International Limited ("CITIC"). I should record that by the time of the sanction hearing its concerns had evaporated. Indeed CITIC ultimately voted in favour of the Scheme.

Conclusion

142. A company applying for sanction has, rightly, to jump over a number of hurdles to persuade a court to grant sanction. However, in a case where the vast majority of financially astute creditors, with adequate information in a properly constituted class, vote overwhelmingly in favour of sanction,

and no opposition is presented at the sanction hearing, the court should generally be very slow to look for obstacles in the way of granting appropriate judicial sanction. On the contrary, the court should be fast to respect the will of the majority and to find pragmatic solutions to any problematic issues arising.

143. Commercial courts should seek to oil the wheels of commerce to make sure they run smoothly for the benefit of all relevant stakeholders. Commercial courts should not seek to put grit or a spanner in the corporate works.

144. As Lewison LJ put it in *Procter v Procter* [2021] EWCA Civ 167, [2021] Ch 395 at [8]:

> "As a broad and over-simplified generalisation, the courts try to oil the wheels of commerce, rather than to throw grit into the engine."

145. Let me be clear, I am far from suggesting that an unopposed sanction hearing is a mere formality. I am not suggesting for one moment that the sanction hearing should, in light of an overwhelming majority vote and lack of any opposition at the sanction hearing, be a rubber-stamping exercise. Of course the court must be satisfied that the relevant legal hurdles have been jumped and the company has reached the finish line where sanction should be granted.

146. In this case I was so satisfied.

<u>Order</u>

147. Accordingly, based on the evidence and arguments put before the court, I was content to sanction the Scheme.

148. I made an order substantially in terms of the draft helpfully provided before the hearing.

David Doyle

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The Hon. Justice David Doyle
Judge of the Grand Court