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Case No: CR-2022-003706

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**INSOLVENCY & COMPANIES LIST**

The Rolls Building
Fetter Lane
London EC4A 1NL

Date: 14 December 2022

**Before** :
**Sir Alastair Norris**
**(Sitting as a Judge of the High Court)**

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**IN THE MATTER OF HONG KONG AIRLINES LIMITED**

**AND IN THE MATTER OF THE COMPANIES ACT 2006**

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**Tom Smith KC, Clara Johnson and Georgina Peters** (instructed by **Latham & Watkins LLP** ) for the **Applicant**

Hearing date: 9 December 2022

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# APPROVED JUDGMENT

(subject to editorial corrections)

**Sir Alastair Norris :**

1. Hong Kong Airlines Ltd ("the Company") was incorporated in Hong Kong in 2001. It remains registered there, and its centre of main interests is located in Hong Kong. It is registered at Companies House in England as an overseas company. As its name suggests it carries on the business of an airline, with a passenger and cargo business (and related services) centred on Hong Kong airport.

2. For present purposes it may be said that its ultimate shareholder is HKA Group Holdings Co Ltd, a BVI incorporated company ("HKA Holdings BVI"). The ownership of HKA Holdings BVI is divided between a number of corporate and individual shareholders, one whom ("HNA Group") became insolvent and is the subject of reorganisation proceedings in the People's Republic of China. HNA Group transferred its shareholding in the Company during its reorganisation.

3. Below HKA Holdings BVI are two intermediate shareholders:-

   (a) the Company is a sub-subsidiary of Hong Kong Airlines International Holdings Limited, a Cayman incorporated company ("HKA Holdings Cayman");

   (b) the Company is a direct subsidiary of HKA Group Company Limited, another BVI incorporated company which is also registered in Hong Kong ("HKA Group BVI").

   I will refer to HKA Holdings BVI, HKA Holdings Cayman, HKA Group BVI the Company and their associated companies as "the Group".

4. The Company has obligations to six categories of creditor:-

(a) The aircraft and their parts are held under leases. The Company operates 53 aircraft. Of these 40 are held either under finance leases (under which the Company retains the aircraft on termination of the lease) or operating leases (under which the Company returns the aircraft at the termination of the lease). The leases are conventional in form, and entitle the lessor, should an insolvency-related event occur, to ground the aircraft, to terminate the lease, to repossess the aircraft and to claim termination payments. The 13 remaining aircraft are in the ownership of SPVs, funded by a loan from the China Development Bank ("CDB") to each SPV under security arrangements which include a direct covenant to pay by the Company. At the commencement of the present proceedings the claims in this category amounted to approximately HK$22.5 billion.

(b) Working and long-term capital is provided by banks and other financial creditors. This category includes an issue of senior perpetual notes ("the PNs") governed by English law and guaranteed by the Company, HKA Group BVI and HKA Holdings Cayman. At the time of the hearing the claims of the holders of the PN's had an aggregate value of about HK$6.5 billion.

(c) The operating of the airline has incurred unpaid airport fees (particularly to Hong Kong airport) and other government dues which, at the commencement of the present proceedings, amounted to some HK$1.7 billion. If airport fees remain unpaid the airport operator can ground any

aircraft operated by the defaulting airline. If government dues are not paid critical licences may be withheld.

(d) Operating the business has inevitably incurred liabilities to trade creditors, suppliers and suppliers of services. At the commencement of the present proceedings these stood at some HK$2.5 billion.

(e) There are related party creditors (excluding intra-Group claims) amounting at the commencement of the present proceedings to some HK$6.9 billion.

(f) There are intra-Group claims amounting at the commencement of the present proceedings to some HK$548 million.

5. The Company is unable to repay this indebtedness. Its revenue has been severely hit, first, by a decline in the number of those wishing to visit Hong Kong; and then by the impact of COVID. During the year to January 2020 the Company carried 6,892,593 passengers. In the year to January 2021 it carried 217,693. The year to January 2021 also saw a decline of 52.8% in the cargo tonnage transported. No one disputes that as matters stand the Company is both cash flow and balance sheet insolvent. It is already the subject of a winding-up petition based upon a debt of HK$81.3 million (with supporting creditors in the sum of at least HK$292.2 million) before the Hong Kong Court of First Instance which (by order of Mr Justice Harris) stands adjourned until 16 January 2023: no defence to the petition is suggested and the reason for its adjournment is to see whether a restructuring can be achieved.

6. The Company has now proposed a restructuring plan in an endeavour to secure its continued existence as a going concern. It has three elements:-

(a) the injection of HK$3 billion by a new investor (which emerged as the result of a competitive "new money" solicitation process) in return for a subscription of new equity (conditionally upon completion of the other elements);

(b) the reduction of the aircraft fleet from 53 to 20 aircraft, retained aircraft being held on modified terms and liabilities in respect of the returned aircraft being compromised;

(c) the compromise of the claims the unsecured creditors.

7. The proposed plan (i) does not deal with the entirety of the Company's indebtedness; and (ii) of itself is not sufficient to achieve the desired commercial end.

8. As to the first, the following summary of the claims to be excluded (amounting to HK$17.5 billion) will suffice for the purposes of this judgment:-

(a) The outstanding claims of those whose engagement is critical to the ongoing operation, such as employees, Hong Kong Airport (which has already detained 10 aircraft and with whom a separate consensual arrangement is to be made), other airport authorities, the Hong Kong government and a cash handling facilitator:

(b) The claims of other governments (where a doubt exists as to whether they are capable of compromise);

(c) The any netted-off claims of Group companies (which are to be subordinated to external claims or waived);

(d) Claims by and against the HNA Group (which are to be the subject of a global settlement between HNA Group and the Group to be entered before any restructuring of the Company becomes effective);

(e) Claims in respect of certain sub-leased aircraft where it is intended that the Company will procure a novation of the agreement, thereby enabling the Company to extract itself from the arrangement.

(f) The rights of secured creditors in relation to their security, which rights have either already been the subject of agreement or are the subject of an agreed valuation process.

(g) The claims of the Company's advisers in relation to the formulation and promulgation of the plan.

The Company is, of course, entitled to choose which claims it wishes to compromise by way of a plan or arrangement: SEA Assets Ltd v PT Garuda Indonesia [2001] EWCA Civ 1696.

9. As to the second, the plan cannot of itself achieve a compromise in relation to any liability governed by Hong Kong law, because Hong Kong is a jurisdiction which applies The Rule in Gibbs (Anthony Gibbs & Sons v La Societe Industrielle et Commerciale des Metaux (1890) 25 QBD 399). There is therefore a parallel scheme of arrangement under the Hong Kong Companies

(Winding Up and Miscellaneous Provisions) Ordinance in the same terms (save that it does not deal with the English law debt, principally the PNs) as the proposed plan. The scheme has been approved by the requisite statutory threshold in Hong Kong and the sanction hearing is listed before Mr Justice Harris on 14 December 2022. It is not anticipated that it will be opposed.

10. I must now deal with the proposed plan ("the Plan"). It deals with some HK$31.55 billion of the Company's total indebtedness of some HK$49.01 billion. On 25 October 2022 Mr Justice Fancourt ordered th e convening of three meetings of creditors whose rights were to be compromised by the Plan.

11. First, there was convened a meeting of unsecured creditors consisting of lenders, trade creditors and the lessors of aircraft that were to be returned as part of the operational restructuring ("the Unsecured Creditors"). Their claims total HK$18.276 billion. These claims are to be replaced by claims against a new entity ("AssetCo1"). AssetCo1 is to receive HK$990 million out of the injection of new money, and to have the benefit of a "contingent value right" ("CVR") in the event that the restructured Company achieves certain financial performance targets. Of these receipts AssetCo1 will immediately pay each Unsecured Creditor a sum representing about 5% of the value of its unsecured claim and will subsequently distribute a pro rata share of any payment under the CVR arrangement.

12. Second, there was convened a meeting of the financiers or lessors of aircraft which are to be retained under the operational restructuring ("the Critical Lessors"). Their claims total HK$6.7 billion. The Critical Lessors are afforded an option under the Plan. Option 1 is to continue the leases or

finance arrangements on the aircraft retained by the Company (but on amended terms and for a different duration); and to receive in addition from a new entity ("AssetCo2") (i) a payment representing 5% of the difference between its existing claim and the value of its new lease rights; and (ii) a pro rata share of any payment under a similar CVR arrangement. AssetCo2 is to receive HK$110 million out of the injection of new money to fund these payments, and to have the benefit of a CVR arrangement. Option 2 is for the lessor or financier to terminate the lease or financial arrangement, obtain a return of the aircraft, and then to claim as an Unsecured Creditor.

13. Third, there was convened a meeting of the holders of the PNs ("the Perpetual Noteholders"). Their claims total HK$6.56 billion (or US$683 million). In the events which have happened Perpetual Noteholders are to reduce that claim to US$100 million and in return will receive (i) an immediate cash payment of a sum representing 2.5% of the outstanding principal amount of the PNs and (ii) (by amendments to the PNs) a performance-linked distribution based on the CVR regime applicable to other classes. (The amended terms also contain provisions which, at the option of the issuer of the PNs, may result in further payments to the Perpetual Noteholders). The guarantees supporting the PNs are to be released.

14. At the convening hearing there were interventions from two groups of creditors: (i) an ad hoc group of Perpetual Noteholders ("the AHG") holding approximately one third of the PNs, who sought an adjournment of the convening hearing; and (ii) two aircraft lessors who formed part of the proposed class of Unsecured Creditors, sought permission to raise class issues

at the sanction hearing. By his Convening Order Mr Justice Fancourt permitted any creditor to raise class or other jurisdictional issues at the sanction hearing and laid down a tight timetable for the identification of any such issues and the exchange of evidence. In the event, although on 21 November 2022 solicitors for the AHG set out a list of issues which they intended to raise, no creditor filed any evidence; and on 29 November 2022 the AHG withdrew its list of objections.

15. Only the Company appeared at the hearing. But, as has often been said, the lack of opposition does not relieve the Court of the burden of scrutiny, though (where objections have been raised) it does not place upon the applicant the burden of arguing against its own case or upon the judge the burden of advancing the objectors' arguments: see Re Smile Telecoms Holdings [2022] Bus LR 591 per Snowden LJ at [51]-[52]. It was, no doubt, in knowledge of these views of Snowden LJ that the solicitors to AHG not only indicated an intention not to appear but also expressly withdrew their list of issues (rather than simply leaving them "on the table").

16. This is the Plan for which sanction is sought, which sanction I gave at the conclusion of the hearing on 9 December 2022 for reasons to be given in writing. I propose to state those reasons shortly, partly because the issues for decision are those which frequently arise in cases such as this and there is a substantial body of law settled at first instance, partly because the Plan creditors are for the most part financial institutions who are both sophisticated and have access to advice, and partly because the Hong Kong Court of First

Instance is well versed in schemes of arrangement and in the body of common law concerning them.

17. Sanction is sought under Part 26A ("Part 26A") of the Companies Act 2006 ("the 2006 Act"), though not under that part of it which authorises "cross-class cramdown". Such applications under s.901F of Part 26A have much in common with schemes of arrangement under the 2006 Act, and it is well settled that decisions in cases concerning schemes of arrangement provide a clear guide for the exercise of the jurisdiction under this head of Part 26A: Re Gategroup Guarantee Ltd [2021] BCC 722. Adopting that approach I have identified seven groups of issues on which decisions are required.

*Questions about jurisdiction*

18. Applications under Part 26A can only be made if the two threshold conditions are satisfied (Condition A and Condition B). Insofar as the satisfaction of these two Conditions was not decided at the convening hearing (i) I find that the Company has encountered financial difficulties that are affecting its ability to carry on business as a going concern; (ii) I hold that it is proposing a compromise or arrangement with classes of its creditors the object of which is to eliminate, reduce or mitigate the effect of those financial difficulties.

But I should elaborate on two issues which have been the subject of challenge by the AHG.

19. I am satisfied that the Company is "a company" for the purposes of Part 26A: it is a foreign company liable to be wound up as an unregistered company under the Insolvency Act 1986. The court will, however, as a matter of

discretion only exercise jurisdiction over a foreign "company" if it has "a sufficient connection" with this jurisdiction: Re Drax Holdings [2004] 1WLR 1049. That is because an English court will not wind up a foreign company where it has no legitimate interest to do so, thereby exercising an exorbitant jurisdiction contrary to international comity. Although going to the discretion whether or not to sanction the Plan, the point is conveniently dealt with here.

20. I hold that in the instant case is there is "a sufficient connection". First, the Company is an overseas company registered as such in this jurisdiction. Second the PNs are governed by English law and, under The Rule in Gibbs, can only be varied by the order of an English court. Third, English law governed debt amounts to 42% of the Company's total indebtedness. Whilst in some cases a sufficient connection has been found because the "overwhelming majority" of a plan or scheme proponent's indebtedness is governed by English law (see e.g. Re Smile Telecoms Holdings Limited (*supra)*at [60]-[61]) that does not mean that "an overwhelming majority" of indebtedness is necessary to establish the sufficiency of the connection. "Sufficiency" falls to be established by an intense focus on the facts of each case and not by satisfaction of some (as yet unstated) numerosity requirement. Fourth, in the instant case there has been active participation in the Plan by a very significant portion of the holders of non-English law debt (both Hong Kong and PRC governed debt). Fifth, the Plan is proceeding (as Mr Smith KC put it) "hand-in-glove" with the Hong Kong scheme of arrangement: far from exercising an exorbitant jurisdiction the English court is simply playing its part in cross-border insolvency proceedings. Sixth, there is something to be said for having a comprehensive plan in one jurisdiction (supported by parallel

schemes in others ) rather than having a jigsaw of interlocking schemes. In the instant case I am satisfied that there is a sufficient connection which justifies the English court considering the Plan.

21. I further hold (which has been the subject of challenge by the AHG) that the Plan is a "compromise" or "arrangement" for the purposes of Part 26A. It seems to me obvious that the Plan creditors give up some of their existing rights and in return receive replacement rights. Their existing rights are not expropriated.

22. A further jurisdictional issue concerns the ability of this Court to deal with the leasing and financing arrangements relating to certain aircraft and their parts. The Convention on International Interests in Mobile Equipment 2001 ("the Cape Town Convention" or "CTC") as applied to aircraft and aircraft equipment by the Protocol to the Cape Town Convention on Matters Specific to Aircraft Equipment deals, amongst other things, with the effect of insolvency law upon the rights of lessors and the holders of international interests in aircraft. It has been ratified by the United Kingdom and by China (but not by the Hong Kong SAR). One of its key provisions says that where the lessee has suffered "an insolvency-related event" then no obligations of the lessee may be modified "without the consent of the creditor". This potentially applies to eight of the aircraft intended to be retained (being therefore held by "Critical Lessors") where a Chinese company is a co-lessee with the Company. I do not need to decide the vexed question of whether a Part 26A plan is "an insolvency related event" for the purposes of the CTC. For present purposes I can assume that it does apply and enquire whether the rights of the

aircraft lessor can nonetheless be modified because the modification is made with "the consent" of the creditor.

23. Whether this issue is characterised as going to jurisdiction (being a "roadblock" which would inevitably lead to a refusal of sanction) or as potentially being a "blot" on the Plan rendering it technically defective matters not: it is convenient to deal with it in this group of issues. I hold that the CTC in this case presents no jurisdictional difficulty and sanctioning the plan would not involve the sanctioning of a breach of international obligation. First, the Critical Lessors unanimously voted in favour of the Plan: each may therefore be taken to have consented to the modification of its rights which the Plan contains. The same point arose in Re MAB Leasing Ltd [2021] EWHC 379 at [47]-[49] . Second, each Critical Lessor has available Option 2 under which it may decline to accept the modification of its rights and instead terminate the arrangement and recover its aircraft. The modification of the lessor's rights will therefore only occur if Option 2 is declined and Option 1 chosen. By choosing option one the lessor consents to the modification of its rights. (I should here acknowledge the assistance I gained from the writings of Professor Louise Gullifer and Professor Riz Mokal).

*Compliance*

24. Having reviewed the evidence I am satisfied that there has been compliance with the statutory requirements and with the terms of the Convening Order of Mr Justice Fancourt: and I so find. No more need be said.

*Constitution of the Plan meetings*

25. Class questions would normally be settled at the convening hearing. But in the instant case the AHG and two lessors of aircraft raised the possibility that there were class questions which required examination. The court must be astute, particularly with applications under Part 26A, to see whether the conventional class composition rules are being manipulated so as to constitute a single assenting class or to dilute the votes of potential dissenting creditors. Unsurprisingly, rather than adjourn the convening hearing Mr Justice Fancourt permitted the class issues to be formulated and evidenced. The AHG prepared (and then formally withdrew) a list of issues. Nobody filed any evidence No one appears at the hearing for the purpose of raising any issues. I shall therefore simply undertake the usual scrutiny.

26. The principles for class composition under Part 26A are the same as those for schemes of arrangement under the 2006 Act: Re Virgin Atlantic Airways [2020] BCC 997 at [44]-[48]. Those class composition rules are very well known and a further summary of them would serve no purpose. I simply highlight (i) that from the first the key consideration has been that a class must be confined to those persons whose rights are not so dissimilar as to make it *impossible* for them to consult together with a view to their common interest (see Sovereign Life Assurance v Dodd [1895] 2 QB 273 at 283); and (ii) the valuable exposition of class composition by Lord Millett in the Hong Kong case of the Re UDL Holdings Limited [2002] 1 HKC 172 at a 184 to 185.

27. The task in hand is to look at the existing rights of Plan creditors which it is proposed shall be varied or compromised by the Plan, and to do so in the context in which those rights fall to be exercised; and then to look at the rights

received under the variation or compromise. In the present case it is common ground that that company is a liquidation: that is the realistic alternative to the implementation of the Plan. I have already drawn attention to the existence of a winding up petition (with supporting creditors) due for hearing on 16 January 2023, to the impounding of aircraft by the Hong Kong airport authority, to the right of that authority and aircraft lessors to take possession of aircraft where there is a default in payment, and to the cash flow insolvency of the Company.

28. Unsecured creditors of the Company would be entitled to prove for their debts in a Hong Kong liquidation, and to receive a pari passu distribution. Secured creditors will either have to value their security and prove for the deficiency or surrender their security and prove for the entire debt. The Unsecured Creditors who met for the purpose of considering the Plan included creditors who held security for their indebtedness. The question is whether it was impossible for them to meet together with creditors whose debts are not secured at all with a view to considering their common interest. I consider that it was not impossible.

29. The Plan does not affect security rights. Security rights are not being compromised, released or varied. What is being compromised is the right of the secured creditor to recover the deficiency, the element of its claim that exceeds the value of its security, the amount for which it would have to prove in a Hong Kong liquidation: see the expert opinion of Tommy Cheung dated 2 December 2022. As regards this there is an identity of interest with other

members of the class of Unsecured Creditors who hold no security. I am satisfied that the class of Unsecured Creditors was correctly constituted.

30. I reach that view as a matter of principle. Mr Smith KC submitted that it was in fact consistent with (i) the approach taken in Re Hawk [2002] BCC 300 at [35] ; and (ii) the scheme approved in Re Anglo-American Insurance Co Ltd [2001] 1 BCLC 755 at 759h and 767a . I accept that that is so; and although the point was not directly argued, class composition was the subject of argument by distinguished counsel who did not seek to suggest that secured creditors could not consult with unsecured creditors as regards the deficiency claims. I take some comfort from that.

31. One further point arises. The claims of Unsecured Creditors arise out of obligations governed by English (32%), Hong Kong (49%) and PRC (19%) law. It was at one time suggested that this consideration should fracture the class. But on the evidence the differing governing laws do not affect the nature of the claim capable of being advanced by the creditor in a Hong Kong liquidation of the Company. The claims that can be advanced in the liquidation are governed by the Hong Kong rules of winding up; the governing law of the original obligation is not material.

32. I hold that the class of Unsecured Creditors was properly constituted.

33. The Critical Lessors who met together fell into two categories; (i) 12 lessors of aircraft to be retained as part of the operational restructuring: and (ii) CBD as as lender to six SPVs whose aircraft are to be retained (and which has the benefit of a direct payment covenant from the Company). The rights to be compromised are essentially similar; a right of termination and an unsecured

claim for outstanding sums due. CBD has in addition a security claim over shares in the relevant SPVs. But this security has no value. The rights given under the Plan provide each of the Critical Lessors with the same economic treatment i.e. although there are differences in the sums to which they will become ultimately entitled this is the result of the consistent application of established valuation rules to different types and vintages of aircraft. Mr Smith KC submitted (and I accept) that this is the same approach was adopted in Re MAB Leasing Ltd [2021] EWHC 152 (Ch) and [2021] EWHC 379 (Ch), where (although there might be differences in outcome occasioned by differences in election or differences in market value or differences in original contractual rates) the differences were not material and there was more to unite than to divide. I take comfort from that. I hold that the class of Critical Lessors was properly constituted.

34. The Perpetual Noteholders met as a class. The rights which they compromised and the rights they received in return were identical. They are a properly constituted class.

35. I am therefore satisfied that each class which section 901F of Part 26A requires should agree the compromise was properly constituted.

*Statutory majorities*

36. Section 901F of Part 26A requires 75% in value of the class of creditors present and voting at the class meeting to agree the compromise or arrangement. 90.83% by value of the Unsecured Creditors present and voting at their meeting approved the Plan. 100% of the Critical Lessors present and

voting at that class meeting agreed to the Plan. 79.74% by value of the Perpetual Noteholders present and voting at their meeting approve the Plan.

37. It is clear that the statutory majorities were achieved.

*Can the court safely rely on the outcome of the class meetings?*

38. There are four sub- issues to consider under this heading. The first is whether (bearing in mind that there is no numerosity requirement under Part 26 A) the class meetings may be regarded as fairly representative of the relevant class. 60 out of 160 known Unsecured Creditors attended the class meeting. Taking into account the fact that a class of unsecured creditors will consist of creditors of a widely disparate type, some with modest claims and some not inclined to engage with the restructuring process, I regard that as fairly representative of the class. All of the Critical Lessors voted at their meeting. 66.88% of the Perpetual Noteholders voted at their meeting. I consider that to be a fair representation.

39. The second sub-issue is whether those attending (or choosing not to attend) were properly informed. This is the function of the Explanatory Statement. In the instant case that Explanatory Statement was comprehensive and comprehensible by its intended addressees. It provided sufficient information to enable the Plan creditors to decide whether to accept what was offered by the Plan in substitution for their rights in a liquidation. It was circulated on 28 October 2022 in preparation for Plan meetings intended to be held on 25 November 2022, allowing sufficient time for consideration. But it was the subject of three modifications with which I must briefly deal. These were circulated to Plan Creditors on 17 November 2022.

40. The original Plan contained in clause 9.8 a conventional provision permitting the Company to consent on behalf of all Plan Creditors at the Sanction Hearing to any modifications to the Plan or the Restructuring Documents, as the Court may approve, which would not directly or indirectly have a material adverse effect on the rights or interests of the relevant Creditors. The three proposed modifications (I will summarise their substance rather than descend to textual detail) arose out of further negotiation.

41. The first modification relates to a Company asset called "the BOCOM Structured Notes". These were thought be valueless (and the Plan was prepared on that footing). Certain creditors thought that they might have value. The Plan has been modified so as to ensure that if the BOCOM Structured Notes have value then any recoveries will be distributed to Plan Creditors.

42. The second modification arose out of a request by CDB that its own claims against HNA Group in the Chinese reorganisation should clearly not be impacted by any compromise between the Company and the HNA Group. There are 4 other Plan Creditors who might likewise be concerned. The proposed modification preserves the rights of such Plan Creditors in the HNA Group reorganisation (for they were never intended to be affected).

43. The third modification relates to an enlarged claim by Rolls Royce. The Plan was prepared on the footing that the claim of Rolls Royce against the Company stood at the US$7 million shown in the Company's books. But Rolls Royce has made demand in the total sum of US$911 million which would have an impact upon the recoveries of Plan Creditors under the Plan (and also in a liquidation). The Company is proposing the payment, on a contingent

basis, of an additional sum to AssetCo1 so as to secure that the initial payment to each Unsecured Creditor does not fall below that originally proposed (of about 5% of the unsecured claim) ("the Anti-Dilution Provision"). The Anti-Dilution Provision does not apply to possible distributions by AssetCo1 in respect of the CVR, and because the CVR depends on the achievement of targets, an enlarged Rolls Royce claim may affect that achievement. This was explained in a Second Supplement to the Explanatory Statement also sent on 17 November 2022.

44. Because of the circulation of the Supplemental and Second Supplemental Statements on 17 November the Plan meetings were adjourned until 1 December 2022. I am satisfied that this gave Plan Creditors sufficient time to consider the modified proposals.

45. In my judgment the modifications do not have any material adverse effects upon the Plan Creditors. Indeed, they are designed to confer benefits, either financial or in terms of clarity. I indicated at the hearing that I would approve them. It was upon the modified Plan that the properly informed Plan Creditors voted. That concludes the second sub-issue.

46. The third sub-issue is whether the arrangements for the Plan meetings were such as to facilitate participation. I am satisfied that they were and that there is no reason to doubt that the recorded outcome of the meeting truly reflects the views of those who participated or wanted to participate.

47. The fourth sub-issue is whether the majority acted *bona fide* and in accordance with their interests as ordinary class members. The AHG suggested in its (now withdrawn) list of issues that by reason of the collateral

interests of certain creditors and the effect of such collateral interests upon voting outcome, sanction ought to be refused. I have not identified any special interest of a member of the majority in any class different from and adverse to the interests of other class members. In particular, having held that the presence of secured creditors at the meeting of Unsecured Creditors did not *fracture* the class, I should confirm that I do not consider that the presence of creditors with security interests unaffected by the Plan can be taken of itself to *influence voting* on the deficiency claims that fell within the Plan. The interest of those holding unsecured claims (of whatever nature) was identical: did the implementation of the Plan offer a better prospect than proof in an inevitable liquidation? (It is, in addition, pointed out that only two secured creditors attended the meeting of the Unsecured Creditors, and that if the votes of those two secured creditors were to be discounted or set on one side, the Plan would still have been approved by over 90% of the Unsecured Creditors voting at the meeting. There was therefore a very large majority of Unsecured Creditors without the supposed special interest of unaffected security rights).

*Fairness*

48. It is well settled that as part of the sanction process Court must assess whether the proposed plan is for a "fair" the sense that it embodies a compromise that might reasonably be entered into by an intelligent and honest class member addressing the issues for decision having regard to his or her ordinary class interests. Clearly a very high number of the creditors of the Company consider that it is, as demonstrated by the representation at the Plan meetings

and the margins by which the Plan was approved. Being properly informed, such creditors are the best judges of their own commercial interests.

49. It is easy to see, on an objective basis, why they might make that judgment. The only alternative to the Plan is an immediate liquidation. Grant Thornton have prepared (and the Plan Creditors have received) an analysis of the projected returns in a liquidation. For the Unsecured Creditors the recoveries are likely to be between 0.8% (low case) and 1.3% (high case). The projected recoveries under the Plan lie in the range 5.1% to 10.1%. For the Critical Lessors the liquidation return is likely to be between 4.1% (low case) and 5.8% (high case). The projected recoveries under the Plan lie in the range of 5.1% to 10.5%. For the Perpetual Noteholders the liquidation return is likely to be 0.9% (low case) and 1.4% (high case). The projected recoveries under the Plan lie in the range of 2% to 12.2%. (If the Rolls Royce claims were admitted in full in any liquidation then "low case" returns would be further reduced). Thus, in each case the Plan offers the prospect of materially better returns.

50. I hold that the "fairness" test is satisfied.

*Is there any technical or other defect in the Plan that would affect its effectiveness?*

51. No-one has suggested that there is any technical defect in the scheme which deprives it of effect or (now that the CTC issue may be laid on one side) that there is an infringement of some mandatory provision. But it is convenient to consider under this head whether the Plan will be internationally effective. In doing so I propose to adhere to the approach which I set out in Re DTEK

Energy BV [2022] 1 BCLC 260 at [27] namely, the court needs to be satisfied that the scheme will achieve a substantial purpose in the key jurisdictions in which the Company has liabilities or assets, and for that purpose will require credible evidence that the scheme has a real prospect of being recognised and given effect.

52. As to the legal issues arising; first, according to ordinary principles of international law a compromise of English law governed debt (which amounts to 42% of the Company's total indebtedness) approved by an English court is likely to be internationally recognised as effective. Second, the Report of Mr Tommy Cheung confirms that a Hong Kong Court would be likely to give effect to the compromise of that debt. Third the Report of Collette Wilkins KC confirms that the BVI and Cayman Court's would treat as valid and effective a compromise of the English law governed debt under the Perpetual Notes and the related guarantee obligations of HKA Group BVI and of HKA Holdings Cayman.

53. As to factual matters; first, the Plan has been approved by 91.86% of the Plan Creditors: it is unlikely that they will seek to undermine the Plan in other jurisdictions available to them, and the courts in any such jurisdiction are likely to take into account the very high level of support for the Plan. Second, 99% of unsecured creditors holding PRC law-governed claims voted in favour of the Plan: it is unlikely that they will seek to undermine the Plan in China. Third, CBD (being a Critical Lessor holding a PRC law-governed claim) approved the Plan: it is unlikely that it will seek to undermine the Plan in

China and a Court in the PRC is likely to acknowledge that CBD submitted to the English jurisdiction.

54. Accordingly, there is a reasonable prospect that the Plan will have a substantial effect in Hong Kong, the BVI, the Cayman Islands, and China; and that in granting sanction this Court will not have been acting in vain.

*Conclusion*

55. For these reasons I granted sanction to the modified Plan.