



Neutral Citation Number: [2026] EWHC 1414 (Ch)

Case No: CR-2025-008964

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 June 2026

Before:

MR JUSTICE HILDYARD

IN THE MATTER OF
SCUR-ALPHA 1092 GmbH

- and -

IN THE MATTER OF
THE COMPANIES ACT 2006

Mr Adam Al-Attar KC (instructed by **Latham & Watkins LLP**) for the **Plan Company**
Mr Nicholas Yeo KC and **Christopher Snell** (instructed by **Gherson Solicitors LLP**) for the
Designated Scheme Creditor

Hearing dates: 5 May 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 10 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR JUSTICE HILDYARD

Mr Justice Hildyard:

1. SCUR-Alpha 1092 GmbH (“the Scheme Company”) seeks the Court’s permission to convene one or two meetings of scheme creditors (“the Scheme Creditors”) to consider and, if thought fit, approve a scheme of arrangement (“the Scheme”) under Part 26 of the Companies Act 2006 (“CA 2006”).
2. The Scheme Company is incorporated in Germany, with its registered office in Munich. It is primarily a holding company with no revenue-generating operations. Its entire issued share capital is held by SCUR-Alpha 1080 GmbH (“the Parent”), whose ultimate indirect parent is Luxembourg Investment Company 285 S.à r.l., majority-owned by entities managed or advised by Partners Group Holding AG (the “Sponsor”).
3. The Schleich group (“the Group”) was founded in 1935 and is one of Germany’s largest toy manufacturers, with 315 employees as of 31 October 2025 and operations in 13 countries. It focuses on figurines and playsets, including licensed franchises. Schleich GmbH (“OpCo”), the Scheme Company’s indirect subsidiary, is the key operating entity. The Group was acquired by the Sponsor in 2019.

The Group’s financial difficulties and need for restructuring

4. The Group has financial difficulties. These are largely the result of an unsuccessful operational restructuring programme, a material decline in sales volumes since 2023 following the post-pandemic correction and increased macro-economic pressures. In particular:
 - (1) In 2023, the Group discontinued the toys franchise ‘Sofia’s Beauty’, which was only established in 2022, due to insufficient sales. As a result of the discontinuation, the Group held: (i) semi-finished stock valued at €1.6 million, (ii) finished stock valued at €3.4 million and (iii) collectibles valued at €2.2 million. The Group ultimately had to write off c.25% of the stock value and c.75% of the collectibles value. As a result of the discontinued franchise, the Group experienced a loss of c.€5.6 million.
 - (2) The implementation of an operational restructuring programme known as ‘the Fit 4 Future Programme’ from 2024 to 2025, which was intended to save approximately €12,700,000 per annum, in fact resulted in additional severance, temporary personnel, re-hiring and logistics costs, compounded by knowledge-transfer weaknesses and issues with the relocation of the Group’s headquarters and the transition to a new shared service centre in Prague.
 - (3) The Group has experienced declines in revenue and sales volumes since 2023. This has in turn given rise to liquidity pressure under contractual arrangements with EDEKA, a German supermarket group and key customer with which OpCo has conducted an annual loyalty campaign. Under the 2024 EDEKA Loyalty Campaign, OpCo was required to repurchase from EDEKA an aggregate of €13,049,554 of unsold goods (c.48% of goods invoiced in 2024). OpCo had insufficient liquidity to repay EDEKA and, in April 2025, EDEKA called on the EDEKA Guarantees, creating a new liability of €9,400,000 owed by OpCo.

5. Since March 2025, the Group's liquidity has been severely constrained and management has had actively to manage cashflows and negotiate payment deferrals to keep the Group trading as a going concern. To manage liquidity constraints and the risk of being deemed illiquid (*zahlungsunfähig*) under section 17 of the German Insolvency Code (*Insolvenzordnung*) and/or over-indebted (*überschuldet*) under section 19 of that Code, management has been in discussions with key stakeholders to agree payment deferrals or plans for amounts falling due.
6. The position now is that its existing borrowing facilities are drawn in full, though an Interim Facility, which is in the nature of a bridging loan, has been put in place pending accomplishment of a comprehensive capital restructuring of the Scheme Company's indebtedness to enable it and the Group to continue trading. Such a restructuring is urgently required if value-destructive insolvency is to be avoided.
7. The purpose of the proposed Scheme is to restructure, as part of an overall restructuring of the Group's indebtedness ("the Restructuring"), such of the Scheme Company's indebtedness under its Existing Senior Facilities Agreement ("the SFA") as is governed by English law.
8. The English law-governed instruments comprising the SFA are (a) an EUR term loan facility ("the Existing Term Facility", and the lenders thereunder being the "Existing Term Facility Lenders") in a principal amount of €169,000,000.00, with a present maturity date of 22 August 2026; and (b) a multicurrency revolving credit facility in a principal amount equal to €20,000,000 ("the Existing RCF", and the lenders thereunder being the "Existing RCJ Lenders").
9. The OpCo also has other ancillary facilities provided by certain lenders ("the Ancillary Facility Lenders") under the umbrella of the SFA, the terms of which are set out in a separate agreement (the "Ancillary Facilities Agreement"), which is governed by German law. The facilities governed by the Ancillary Facilities Agreement are (a) an overdraft facility of €15,000,000 and (b) a guarantee of €5,000,000 issued to EDEKA (together, the "Ancillary Facility Liabilities", and see paragraph [4(3)] above). Under the SFA, the Ancillary Facility Lenders benefit from the same joint and several guarantees from the Scheme Company, Schleich Group Holding GmbH and OpCo (together, "the Obligor"), and are secured by the same German-law transaction security package (share pledges, account pledges and security assignments of receivables), as the Existing Term Facility Lenders and the Existing RCF Lenders.
10. In addition, OpCo has recently entered into an interim facility ("the Interim Facility") setting out the terms of short-term borrowing in the sum of €32,000,000 to cover forecast liquidity shortfalls since November 2025 and repayable upon completion of the Restructuring. The Interim Facility was subscribed by those referred to as "Eligible Scheme Creditors" from which category any creditor which has been designated a Sanctions Disqualified Person (see paragraph [98] below) has necessarily had to be excluded. Some €15,100,000 of the Interim Facility had been drawn down as at 20 April 2026.

Objectives of the Restructuring

11. The principal objectives of the Restructuring and the Scheme are to: (i) de-lever the Scheme Company's balance sheet; and (ii) eliminate near-term refinancing risk in

relation to the SFA Liabilities. To achieve this, the Restructuring would: (i) transfer ownership from Sponsor-controlled entities to a new holding structure that will be owned by an autonomous newly incorporated Dutch foundation (*stichting*) (“the Foundation”), with certain governance rights ceded to the lenders under the SFA (including the Scheme Creditors); (ii) establish a new super senior facility, with Eligible Scheme Creditors able to participate in new money; (iii) exchange remaining Scheme Liabilities for commitments under the new super senior facility (through elevation rights that will be available to certain Scheme Creditors that have elected to provide new money to the Group), a new restated term facility and a new PIK facility; (iv) waive any remaining claims under the SFA, and (v) provide for the issuance of certain “contingent value right” instruments to give Scheme Creditors the opportunity to benefit from any potential equity upside.

12. The separate elements of the Restructuring reflect the fact that some of the agreements are governed by English law and others by German law, although it should be noted that the claims of the Scheme Creditors and the Ancillary Facility Lenders under the SFA and the Ancillary Facilities Agreement are governed by an intercreditor agreement dated 19 August 2019 (as amended and/or restated) (“the Intercreditor Agreement”).
13. As to the different laws applicable:
 - (1) The SFA and Intercreditor Agreement are governed by English law and are subject to the exclusive jurisdiction of the English courts, save that the finance and secured parties may bring proceedings in other courts with jurisdiction. Only the Group’s English law-governed liabilities under the Existing Term Facility and the Existing RCF (“the Scheme Liabilities”) will be subject to the Scheme.
 - (2) The German law-governed Ancillary Facilities will be amended as part of the overall Restructuring of the Group, but these amendments are expected to be made consensually, subject to one point. That point is that a StaRUG¹ may be required for OpCo to compromise certain potential contingent German tax liabilities owed to the relevant German tax authorities, alongside the Ancillary Facility Liabilities, though this has not yet been finally determined. A decision on whether formally to propose the StaRUG had to be made by 11 May 2026.
 - (3) If a StaRUG is required, as a preliminary step, the existing Ancillary Facility Liabilities (owed to UniCredit Bank GmbH as sole Ancillary Facility lender (“UniCredit”)) will be transferred by UniCredit to certain other SFA Lenders in exchange for an equivalent quantum of liabilities under the Existing Term Facility and/or the Existing RCF (“the StaRUG Debt Exchange”). On completion, UniCredit’s debt will be Scheme Liabilities, and UniCredit - a Scheme Creditor. It is by reference to this contingency that a second Scheme meeting is presently proposed: see below.
 - (4) If a StaRUG is proposed, it and the Scheme will be inter-conditional.

¹ A German law restructuring plan under the Act on the Stabilisation and Restructuring Framework for Enterprises (*Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen*, StaRUG)

14. Before turning to the provisions of the Scheme in more detail, I should, for comprehensiveness, mention that the Group also has local lines, including a €11,500,000 non-recourse accounts receivable factoring facility (being refinanced, as a condition precedent to the Restructuring), a €30,000,000 warehouse inventory financing facility (recently extended to 31 December 2028) and certain bank guarantees. These are unaffected by the Scheme or the Restructuring.

Key elements of the Restructuring

15. The key elements of the Restructuring are elaborated below.

Transfer of the Group

16. On the Restructuring Effective Date, the direct parent of the Parent will transfer the entire issued share capital of the Parent to a newly-incorporated Luxembourg special purpose vehicle (“New Lion Midco”) for nominal consideration. New Lion Midco will be a wholly-owned subsidiary of another newly-incorporated Luxembourg company (“New Lion TopCo”), which will be wholly owned by the Foundation.

New Super Senior Facility

17. A new super senior term loan facility of €119,600,000 (“the New Super Senior Facility Amount”) will be established under the amended and restated Senior Facilities Agreement, ranking senior to the Restated Term Facility on proceeds of enforcement of the New Transaction Security, otherwise *pari passu* (“the New Super Senior Facility”). It matures on 31 December 2028 and bears interest at EURIBOR (zero floor) plus 7% per annum, subject to a ‘pay-if-you-can’ mechanic based on a CFO certification of the Group’s 12-month look-forward cash balance. Interest not paid in cash is capitalised to the Restated Term Facility principal at 10% per annum.
18. The New Super Senior Facility comprises two tranches:
- (1) New Super Senior Facility Tranche A, being an amount equal to the exchanged loans under the SFA (including UniCredit’s exchange) and the Interim Facility; and
 - (2) New Super Senior Facility Tranche B, being (i) the €16,000,000 of new money commitments to be provided by those Eligible Scheme Creditors that elect to participate in the New Super Senior Facility prior to the Super Senior Facility Final Commitment Date (as defined below) and (ii) the amount of any undrawn Interim Facility commitments on the Restructuring Effective Date.
19. Proceeds of the New Super Senior Facility will be applied to (i) refinance the Interim Facility, (ii) elevate Scheme Liabilities of Eligible Scheme Creditors that participate in the Interim Facility and/or the New Super Senior Facility, and (iii) the Group’s general corporate purposes.
20. The New Super Senior Facility will be secured on a first-ranking basis by a substantially enhanced security package. This will comprise the existing transaction security, with additional first-ranking security over, among other things, the Group’s material intellectual property, the material unencumbered receivables and inventory of OpCo

and Schleich USA Inc., the share capital of New Lion Midco and each other Obligor, and material intra-group loans to Obligors (“the New Transaction Security”).

The new money option and participation in the New Super Senior Facility

21. Each Eligible Scheme Creditor may (but need not) participate (directly or through one or more designees (each a “Designee”)) in the New Super Senior Facility. Its maximum commitment is the ratio of its Scheme Liabilities at the Super Senior Facility Final Commitment Date to all outstanding Scheme Liabilities and Ancillary Facility liabilities, multiplied by the New Super Senior Facility Amount.
22. Participation is elected by submitting a duly completed and executed Super Senior Facility Commitment Letter (as defined in the Amended Lock-Up Agreement) by the “Super Senior Facility Final Commitment Date”, being the business day immediately after the Scheme Meeting (expected on or around 4 June 2026). Setting that date after the Scheme Meeting allows Eligible Scheme Creditors time to complete institutional credit, investment committee or other approvals.

New Super Senior Facility Backstop

23. The Steering Committee members (“the Super Senior Facility Backstop Parties”) have agreed to backstop the New Super Senior Facility Amount in full (“the New Super Senior Facility Backstop”). Each is entitled to its pro rata share of an aggregate fee of 4.00% of the €16,000,000 of new money under New Super Senior Facility Tranche B (“the Super Senior Facility Backstop Fee”), either capitalised to the principal of New Super Senior Facility Tranche A on the Restructuring Effective Date, or paid in cash if the Amended Lock-Up Agreement terminates beforehand.

The Interim Facility and the Interim Facility Backstop

24. The Interim Facility, established on 1 April 2026, bridges the Group’s forecast liquidity shortfall between execution of the Amended Lock-Up Agreement and closing. It is a €32,000,000 term loan (€15,100,000 drawn at the date of the PSL), structurally senior to the Existing Term Loans (with OpCo as borrower), secured by its own enhanced security package (to be released on the Restructuring Effective Date), and maturing on the earlier of the Restructuring Effective Date and the Amended Lock-Up Agreement termination date.
25. Each Eligible Scheme Creditor was entitled (but not obliged) to participate (directly or through one or more Designees) in the Interim Facility. The deadline (“the Interim Facility Final Commitment Date”) was 17 April 2026, being 10 Business Days after the Amended Lock-Up Agreement became effective.
26. No Eligible Scheme Creditor indicated that the 10-Business-Day window was too short, or that Lock-Up Agreement mechanics prevented participation. As at the Interim Facility Final Commitment Date, the Scheme Company had received Interim Facility Commitment Letters from all members of the Steering Committee, two other Scheme Creditors and UniCredit (if it should become a Scheme Creditor). Neither the Scheme Company nor its advisers had any indication of any other wish to participate.

27. All Steering Committee members (“the Interim Facility Backstop Parties”, and with the Super Senior Facility Backstop Parties, “the Backstop Parties”) agreed, before establishment, to backstop the Interim Facility Amount in full (“the Interim Facility Backstop”). Each is entitled to its pro rata share of a fee of 4.00% of the aggregate Interim Facility on establishment (“the Interim Facility Backstop Fee”, and with the Super Senior Facility Backstop Fee, “the Backstop Fees”), payable on the same basis.

Elevation mechanics and exchanges

28. On or around the Restructuring Effective Date, the outstanding principal amount of certain existing SFA loans and Interim Facility loans and commitments held by Eligible Scheme Creditors that participate in the Interim Facility and/or the New Super Senior Facility (“the Applicable Commitments”) will be re-tranched as follows:
- (1) Interim Facility Exchanges: (i) all drawn loans under the Interim Facility (including accrued unpaid interest) will be exchanged at par on a cashless basis for an equivalent amount of new loans under New Super Senior Facility Tranche A, and (ii) all undrawn Interim Facility commitments will be exchanged for equivalent commitments under New Super Senior Facility Tranche B.
 - (2) Elevation Exchanges: (i) each Interim Facility Lender will exchange an amount of its Existing Term Loans or Existing RCF Outstandings (as applicable) equal to the aggregate principal amount of its outstanding loans and undrawn commitments under the Interim Facility multiplied by 1.45x, on a cashless basis, for an equivalent amount of new loans under New Super Senior Facility Tranche A; and (ii) each New Super Senior Facility Lender will exchange an amount of its Existing Term Loans or Existing RCF Outstandings (as applicable) equal to the principal amount of its commitment under New Super Senior Facility Tranche B (exclusive of any exchanged Interim Facility commitments) multiplied by 1.45x, on a cashless basis, for an equivalent amount of new loans under New Super Senior Facility Tranche A.
 - (3) UniCredit Exchange: UniCredit will exchange €2,000,000 of either (i) if the StaRUG Debt Exchange (as defined below) has occurred, its Existing Term Loans and/or Existing RCF Outstandings, or (ii) if the StaRUG Debt Exchange has not occurred, its loans under the Ancillary Facility, for new loans under New Super Senior Facility Tranche A. The UniCredit Exchange has been separately negotiated with UniCredit, for the reasons addressed below.
29. The Interim Facility Exchanges, Elevation Exchanges and UniCredit Exchange are together “the Super Senior Exchanges”.

Restated Term Facility

30. The SFA will be amended and restated on the Restructuring Effective Date to provide an amended senior secured term loan facility of €12,000,000 (“the Restated Term Facility”). This will rank contractually junior to the New Super Senior Facility on proceeds of enforcement of the New Transaction Security, and structurally and contractually senior to the New Holdco PIK Facility. It matures on 31 December 2028, bears interest at EURIBOR (zero floor) plus 6.50% per annum subject to the same ‘pay-if-you-can’ mechanic, and is secured on the same New Transaction Security.

31. On the Restructuring Effective Date, each Existing Term Facility Lender and Existing RCF Lender will exchange, on a cashless basis, part of its Existing Term Loans or Existing RCF Outstandings (excluding amounts subject to the Super Senior Exchanges) into equivalent new loans under Tranche A (Term Facility Lenders) or Tranche B (RCF Lenders) of the Restated Term Facility. The aggregate €12,000,000 is allocated pro rata among Existing Term Facility Lenders, Existing RCF Lenders and Ancillary Facility Lenders (“the Senior Exchanges”).

New Holdco PIK Facility

32. A new PIK facility of €35,000,000 will be established under a new facility agreement with New Lion TopCo as borrower (“the New Holdco PIK Facility”). It will be of limited recourse, structurally subordinated to the New Super Senior Facility and the Restated Term Facility, mature on 30 June 2030 and be repayable on an Exit (as defined in the Amended Term Sheet). Interest accrues at 5% per annum, PIK and compounding semi-annually. Security is a first-ranking pledge over the shares in New Lion TopCo and related security, with no guarantees.
33. On the Restructuring Effective Date, each Existing Term Facility Lender and Existing RCF Lender will exchange a certain amount of its Existing Term Loans or Existing RCF Outstandings (excluding amounts subject to the Super Senior Exchanges and the Senior Exchanges), on a cashless basis, into participations in the New Holdco PIK Facility, allocated pro rata (“the New Holdco PIK Exchanges”).

Debt Waiver

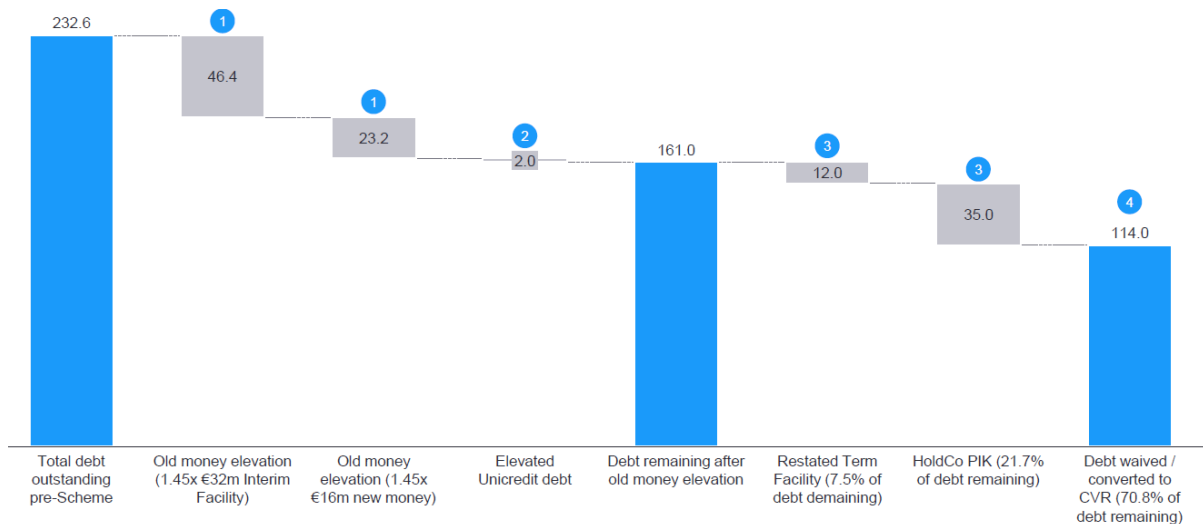
34. Following completion of the Super Senior Exchanges, the Senior Exchanges and the New Holdco PIK Exchanges: (i) the Existing Term Facility Lenders will waive all outstanding Existing Term Loans and any accrued but unpaid interest; and (ii) the Existing RCF Lenders will waive all Existing RCF Outstandings, including any accrued but unpaid interest.

CVR Entitlement

35. On the Restructuring Effective Date, the Foundation will issue a contingent value right instrument (“the CVR Entitlement”) to a CVR agent (“the CVR Agent”) for €1 nominal consideration, held for two classes: lenders under the New Super Senior Facility (“the Senior CVR Beneficiaries”) and lenders under the Restated Term Facility (“the Junior CVR Beneficiaries”, and with the Senior CVR Beneficiaries, “the CVR Beneficiaries”). On an Exit, once the New Super Senior Facility, Restated Term Facility and New Holdco PIK Facility are discharged in full, 60% of CVR Proceeds go to Senior CVR Beneficiaries and 40% to Junior CVR Beneficiaries (including any creditor in both classes), each pro rata to commitments.

Deleveraging

36. According to the Comparator Report, the pre-Restructuring group financing structure (excluding local facilities) has total debt of €241,000,000, and the post-Restructuring group financing structure (excluding local facilities) has total debt of €166,600,000. The allocation of pre-Restructuring debt into the new facilities is shown diagrammatically in the Comparator Report as follows:



37. The Restructuring therefore should achieve substantial deleveraging and a new money injection, each incentivised by an elevation structure which it is hoped and expected should have the support of Scheme Creditors.

Investor Directors

38. Post-completion, certain Scheme Creditors have contractual rights to nominate the investor directors of the Foundation (“the Investor Directors”). The four largest Senior CVR Beneficiaries may each nominate one Investor Director (and propose their suspension or dismissal) while they remain among the four largest. Junior CVR Beneficiaries holding at least 50.1% by value (excluding any Senior CVR Beneficiary that is also a Junior CVR Beneficiary) may jointly nominate one Investor Director. These are rights attaching to the creditor’s position in the capital structure and are not personal rights given to any individual Scheme Creditor.

Treatment of the Designated Scheme Creditor

39. To the extent the Sanctions Licences authorise direct distribution of the Designated Scheme Creditor’s Restructuring entitlements, they will be transferred directly. Otherwise, they will be paid into a holding period trust “the Holding Period Trust” operated by a trustee (“the Holding Period Trustee”) until either (i) the Designated Scheme Creditor is no longer a Sanctions Disqualified Person (or payments to or for its account are no longer prohibited), or (ii) the term of the Holding Period Trust expires, in which case the Restructuring entitlements will be distributed in accordance with the terms of the Holding Period Trust documentation.
40. To the extent the Sanctions Licences (as obtained and/or varied) authorise a Sanctions Disqualified Person to participate in the Restructuring (including in the Interim Facility or the New Super Senior Facility) on the same terms as a non-Sanctions Disqualified Person, that person will constitute an Eligible Scheme Creditor from receipt of the Sanctions Licences by the Scheme Company.
41. The treatment of Designated Scheme Creditors under the Scheme has given rise to objection on the part of one of them, namely, MeSoFa Vermögensverwaltungs AG in Abwicklung (“MeSoFa”). MeSoFa disputes its treatment and its lender status under the Scheme, and the arrangements proposed under the Scheme in relation to its holdings.

Local facilities

42. The Group's local lines (the factoring facility, the warehouse inventory financing facility and certain bank guarantees) will not be compromised under the Scheme or the Restructuring. Refinancing the factoring facility is a condition precedent to completion.

What would happen if the Scheme fails: the 'Comparator'

Comparator to the scheme

43. A central part of the architecture of the sections now invoked, and even at this early stage an important factor to consider, is what would be likely to happen if the Scheme fails.
44. In that event, the Scheme Company considers there is significant uncertainty as to whether the requisite creditor consent for the Restructuring, or any alternative, could be obtained, particularly given the Designated Lender issues. The Scheme Company considers it most likely that the Amended Lock-Up Agreement would terminate (voluntarily or on the Long-Stop Date), so that all amounts owed under the SFA and the Interim Facility Agreement would become immediately due and payable.
45. Having regard to the Group's financial position and directors' duties under German law, the Obligors (including the Scheme Company) consider that they would then have no alternative but to file for insolvency in Germany. This would be likely to result in a sale of the operating business by insolvency administrators out of administration at OpCo level.
46. To avoid the heaviest discount, debtor-in-possession ("DIP") financing to cover an approximately four-month accelerated process would be necessary; but, whilst feasible, that would be uncertain, given consent requirements and institutional approval processes. Even if DIP financing could be obtained, sale proceeds would be insufficient to pay the Scheme Liabilities in full, and residual Scheme Creditor claims against sold Group members would be released as a condition of sale. Separate OFAC and/or OFSI licences may also be needed to distribute proceeds to Sanctions Disqualified Persons.
47. The Scheme Company has obtained and will seek to rely on independent expert evidence compliant with CPR Part 35 from EY Parthenon (working with EY Germany) as to the Group's valuation and likely Scheme Creditor outcomes in the Insolvency Scenario. According to the Comparator Report, returns there would be 6.6% (low), 10.7% (mid) and 14.8% (high), compared with non-participating Scheme Creditor recoveries under the Scheme of 8.1%, 13.9% and 19.7% respectively. The mid- and high-case outcomes under the Scheme are therefore better than the Insolvency Scenario for a non-participating creditor; but the Insolvency Scenario high-case exceeds the Scheme Day-1 low-case. The Scheme Company submits that the mid-case is the appropriate comparator².

² *Re Standard Profil Automotive GmbH* [2025] EWHC 2133 (Ch) at [43] per Richard Smith J; and [2025] EWHC 2313 (Ch) at [7] per Meade J ('[I]t is right to say that the scheme in the medium case is still very significantly better than the relevant alternative.').

48. The choice will be for the creditors; but it presently does appear that their approval of the scheme would not be illogical in those circumstances. Overall fairness, including whether it is unfair that there would be a materially better outcome for new money participants, will be matters for the Court if the creditors approve by the requisite majority of each class and the matter returns to Court to consider whether the Scheme should be sanctioned. Such issues, however, are reserved to that next stage and are “*emphatically not*” part of the Court’s assessment at this stage: see: *Re Telewest Communications plc (No.1)* [2004] BCC 342 at [14].
49. I turn therefore to consider more closely the issues which require determination now.

Matters to be determined at the Convening Hearing

50. Section 896(1) CA 2006 provides:

‘The court may, on an application under this section, 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.’

51. The principal issues to be determined now, as may be gathered from the usual description of this hearing as “the Convening Hearing”, are class composition and creditor notification, together with any other essential issue which, if decided against the company, would mean the Court had no jurisdiction or would unquestionably refuse sanction – sometimes called a ‘roadblock’: *Re Noble Group Limited* [2019] BCC 349 at [75]-81].
52. Accordingly, I need to consider and determine at this convening stage:
- (1) the adequacy of notification of the Convening Hearing to interested parties;
 - (2) the Scheme Company’s proposal for either a single class of creditors, or (in the contingency referred to below) two classes of creditors, to consider and vote on the Scheme;
 - (3) the Scheme Company’s proposals for notice, timing and conduct of the Scheme Meeting(s);
 - (4) the relevant documentation; and
 - (5) whether any jurisdictional ‘roadblock’ is apparent at this stage.

Notice of the Convening Hearing

53. The Practice Statement contemplates notice of the convening hearing to scheme creditors. No period is specified: the appropriate period is fact-sensitive, turning on the scheme’s complexity, the urgency of the company’s financial position and creditor sophistication: *Re Selecta Finance UK Ltd* [2021] BCC 168 at [37]–[41] *per* Adam Johnson J (17 days’ notice considered sufficient).

54. In most scheme cases, courts approve notice periods of just under 14 to around 21 days: see, e.g., *Re Noble Group Ltd* at [58]–[59]; *Re Swissport Fuelling Ltd* [2020] EWHC 1499 (Ch) at [24].
55. The PSL was issued on 14 April 2026. The Scheme Company submits that 21 (clear) days’ notice (to 5 May 2026) is adequate in all the circumstances, and in particular:
- (1) the Scheme Creditors are sophisticated financial institutions;
 - (2) the Amended Lock-Up Agreement was executed on 1 April 2026 and Scheme Creditors holding approximately 79% by value of the principal amount of the Scheme Liabilities have entered into or acceded to the Amended Lock-Up Agreement;
 - (3) the Scheme Company has engaged with the Eligible Lenders (as a body, and with the Steering Committee) since April 2025. Ankura has held regular calls with the Steering Committee and management has held fortnightly calls open to all Eligible Lenders since May 2025, at which the Restructuring has been presented, discussed and refined; and
 - (4) all Eligible Scheme Creditors have had access to the term sheet appended to the Amended Lock-Up Agreement since 1 April 2026.
56. The PSL was distributed on 14 April 2026 by the Facility Agent posting it on the Debt Domain Website (to which Eligible Scheme Creditors have access) and by email to the last notified email address of any Sanctions Disqualified Persons, including the Designated Scheme Creditor. This dual-mode distribution was calculated to ensure that the PSL reached every Scheme Creditor, despite the sanctions-related restrictions on the Facility Agent communicating with Sanctions Disqualified Persons via the Debt Domain Website.
57. No complaint of inadequate notice has been made.
58. I am satisfied in these circumstances that the Notice given is adequate for reliance on the Practice Statement and for this Hearing to proceed.

Jurisdiction

59. Scheme jurisdiction is available only if the scheme is a “*compromise or arrangement*” between a company and its creditors (or members), or any class of them: section 895(1)(a) CA 2006.
60. For these purposes, ‘*company*’ means a company liable to be wound up under the Insolvency Act 1986 (“the IA 1986”): section 895(2)(b) CA 2006. A foreign company is liable to be wound up as an unregistered company under Part V of the IA 1986 and so is a ‘*company*’ for Part 26 purposes: *Re Drax Holdings Ltd* [2004] 1 WLR 1049 at [20] and [28]. Though incorporated in Germany, the Scheme Company is liable to be wound up as an unregistered company under Part V, and Part 26 is available. Whether there is a “*sufficient connection*” with this jurisdiction to warrant and give effect to its exercise is a matter I consider later.

61. The Scheme has the requisite ‘give and take’ to constitute a compromise or arrangement: Scheme Creditors’ existing rights under the Existing Term Facility and Existing RCF are released, exchanged or waived and, in consideration, they receive participations in the New Super Senior Facility (if electing to fund new money), the Restated Term Facility, the New Holdco PIK Facility and the CVR Entitlement.
62. The Scheme is also able to vary Scheme Creditors’ existing rights against OpCo (and not only against the Scheme Company as borrower and guarantor) because of the Contribution Deed Poll³. The Scheme Creditors are creditors of both the Scheme Company and OpCo. The Contribution Deed Poll means that OpCo has a claim against the Scheme Company for contribution that is linked to Scheme Creditors’ claims under the Existing SFA. As such, I would accept that, in principle, there is jurisdiction to compromise those rights against OpCo. See e.g. *Re Swissport Fuelling Ltd* [2020] EWHC 1499 (Ch) at [48]-[53].

Class Composition

The principles

63. The class-composition principles are well known. The basic principle is 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* [1892] 2 QB 573 at 583; *Re Hawk Insurance Company Limited* [2001] 2 BCLC 480 at [30]-[33]; *Re UDL Holdings Ltd* [2002] 1 HKC 172, 179.

64. Classification requires consideration of creditors’ rights both if the scheme is implemented and if it is not. As Chadwick LJ said in *Re Hawk Insurance Co Ltd* [2002] BCC 300 at [30]:

‘In each case the answer to that question will depend upon analysis (i) of the rights which are to be released or varied under the scheme and (ii) of the new rights (if any) which the scheme gives, by way of compromise or arrangement, to those whose rights are to be released or varied.’

65. That analysis requires identification of a comparator to the scheme, being the position if the scheme did not proceed: *Re Port Finance Investment Ltd* [2021] EWHC 378 (Ch) at [78]-[79] *per* Snowden J.

66. It is creditors’ legal rights, not their separate commercial or other interests, that determine class. Conflicting interests may be considered at sanction as a matter of discretion. In *Re UDL Holdings Ltd* [2002] 1 HKC 172 at 184, Lord Millett NPJ held:

‘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 own private interests not derived from their legal rights

³ The Scheme Company and OpCo are both borrowers and guarantors under the Existing RCF. OpCo has drawn the Existing RCF in full and is primarily liable to repay all amounts. The Scheme Company has entered into a contribution deed poll dated 20 April 2026 in favour of OpCo (“the Contribution Deed Poll”), pursuant to which if OpCo makes any payment in respect of the RCF Loan then the Scheme Company irrevocably and unconditionally agrees to pay to OpCo by way of contribution an amount that is equal to the Scheme Company’s share of the amount of such obligation that has been paid by OpCo.

against the company is not a ground for calling separate meetings ... 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.’ (emphasis added)

67. In *Re OQ Chemicals Holding Drei GmbH* [2024] EWHC 2036 (Ch) at [38]–[40], Trower J summarised three principles: (i) a comparative exercise by reference to the proper comparator; (ii) a rights-based enquiry that ignores personal or extraneous motivations; and (iii) ‘*material differences in the rights of creditors do not necessarily fracture the class. A proliferation of classes should be avoided if possible and the court should be careful to ensure that the test is not applied in such a manner that it becomes an instrument of oppression by a minority*’.

Application to the present case

68. Applying these principles, the Scheme Company submits that Scheme Creditors’ rights are not so dissimilar as to make consultation impossible, and proposes a single Scheme Meeting, save that if UniCredit becomes a Scheme Creditor via the StaRUG Debt Exchange before the Scheme Meeting, UniCredit will be placed in a separate class (and a second Scheme Meeting convened for it).

Existing rights

69. All Scheme Creditors are lenders under the SFA, as Existing Term Facility Lenders or Existing RCF Lenders. Their claims rank *pari passu* and pro rata under the SFA. Each benefits from the same joint and several guarantees from the same Obligors and the same security package under the Existing Transaction Security.
70. The Existing Term Facility and the Existing RCF do differ in certain terms (including margin, interest payment dates and maturity), but these differences are not material enough to require separate classes:
- (1) both facilities are provided under the same SFA and are subject to the same terms under the Intercreditor Agreement, including the same key legal terms as to representations, covenants, defaults, order of application of proceeds of enforcement and acceleration; and
 - (2) in the Insolvency Scenario (which is the appropriate comparator for the Scheme), the Existing Term Facility Lenders and the Existing RCF Lenders would have materially the same rights, namely to a *pari passu* and pro rata share of any proceeds of a sale out of administration. Upon the appointment of administrators, an event of default would be triggered and the Existing Term Facility accelerated. Differences in interest rates and interest payment dates would, at most, go to the quantum of each Scheme Creditor’s share of sale proceeds, not to the nature of the right.
71. It is submitted that this accords with the settled approach that differences in the economic terms of compromised instruments do not usually fracture a class where the comparator is insolvency or a sale process on enforcement that involves debt

acceleration: see, e.g., *Re Lecta Paper UK Ltd* [2019] EWHC 3615 (Ch) at [14]; *Re Swissport Fuelling Ltd* [2021] 1 BCLC 527 at [34].

Rights under the scheme

72. If the Scheme becomes effective, each Eligible Scheme Creditor is offered the same basic set of rights: the opportunity to participate in the New Super Senior Facility (until the Super Senior Facility Final Commitment Date) and to benefit from the elevation of existing Scheme Liabilities into New Super Senior Facility Tranche A at a factor of 1.45x. There is also the opportunity to elevate participation in the Interim Facility at a factor of 1.45x, and this allocation is equal because of the equal opportunity to participate in the Interim Facility until 17 April 2026. That date is a pre-Scheme Meeting date, but that does not matter in terms of the rights under the Scheme or to the materiality of any difference in rights. The right to elevation in respect of the Interim Facility is allocated based upon an equal opportunity. There is either no difference in rights under the Scheme or none which matters to any Scheme Creditor in considering that Scheme at the Scheme Meeting with those who chose not to participate.
73. In consideration, Scheme Creditors' Existing Term Loans and Existing RCF Outstandings will also be exchanged for their proportionate participations in the Restated Term Facility and the New Holdco PIK Facility, with any residual claims waived. Scheme Creditors who participate in the New Super Senior Facility are also Senior CVR Beneficiaries; all Scheme Creditors participating in the Restated Term Facility are Junior CVR Beneficiaries.
74. Unless there is some specific feature of the overall arrangements which can realistically be said to be likely to influence a creditor's decision how to vote otherwise than by reference to the overall benefits of the Scheme, it seems to me that the proposal for a single class meeting should be adopted. Such a feature is often referred to as a "fracturing element". I turn to consider the following points in that regard.

Lock-Up Agreement

75. Entry into the lock-up agreement does not itself fracture the class: *Re Telewest Communications plc (No.1)* [2005] 1 BCLC 752 at [53]. The Scheme affects Scheme Creditors' rights in the same way, whether or not they are party to the Amended Lock-Up Agreement. Any Scheme Creditor (other than a Sanctions Disqualified Person) may accede before termination.

Participation in the Interim Facility and the New Super Senior Facility

76. Eligible Scheme Creditors which elect to participate in the Interim Facility and/or the New Super Senior Facility benefit from the elevation rights described above, for New Super Senior Facility participants, the New Senior CVR Entitlement. These features reflect commercial necessity: they incentivise Eligible Scheme Creditors to provide the new money needed to sustain the Group through closing and post-completion.
77. That not all Eligible Scheme Creditors will participate does not fracture the class. As Trower J said in *Re OQ Chemicals* at [47], where '*some creditors are unable or unwilling to participate; the consequence of their inability or unwillingness is likely to have flowed from a difference in interest, not rights*'. Where creditors have a fair and

genuine opportunity to participate, differing take-up raises no class (or sanction fairness) issue. In *Re Standard Profil Automotive GmbH* [2025] EWHC 2313 (Ch) at [14], Meade J said: ‘*The key point is that all the creditors in the class are able to subscribe to the new money pro rata the debt they hold, so everybody gets an equal treatment, albeit that those who take up the option might be worse off than those who do not.*’

78. Here, all Eligible Scheme Creditors have had a fair and genuine opportunity to participate in both the Interim Facility and the New Super Senior Facility:
- (1) The opportunity to participate in both facilities is open to all Eligible Scheme Creditors, and each Eligible Scheme Creditor’s entitlement is calculated on a pro rata basis by reference to its Scheme Liabilities.
 - (2) Eligible Scheme Creditors can participate either directly or through one or more Designees. That is intended to accommodate Eligible Scheme Creditors that, due to their institutional circumstances (such as internal mandates), are not able or willing to participate directly. I accept Mr Al-Attar’s submission that by analogy with *Re OQ Chemicals* at [47], such institutional features are personal characteristics, not differences in rights.
 - (3) The Interim Facility Final Commitment Date (17 April 2026) was set ten Business Days after the Amended Lock-Up Agreement became effective, which the Scheme Company considered a reasonable period by which Eligible Scheme Creditors could take an election on participation.
 - (4) The Super Senior Facility Final Commitment Date has been set after the date of the Scheme Meeting, so that all Eligible Scheme Creditors will have had the opportunity to vote on the Scheme before being required to make their final election on participation in the New Super Senior Facility, and to allow sufficient time for any relevant institutional credit, investment committee or other approval processes to complete.
79. As Mr Al-Attar submitted, the Scheme Company’s approach is consistent with that taken in materially similar cases: e.g. *Re Noble Group Ltd* [2019] 2 BCLC 505 (convening) at [103]–[105]; *Re ED&F Man Treasury Management Plc* [2020] EWHC 2290 (Ch) at [14].

Backstop Fees

80. The Court has repeatedly held that backstop fees do not fracture a class, and no authority thus far has gone the other way: see, e.g., *Re Pizza Express Financing 2 Ltd* [2020] EWHC 2873 (Ch) at [42]; *Re Petra Diamonds Treasury Plc* [2020] EWHC 3565 (Ch) at [24]. I would accept that a backstop fee at a normal market rate is not a bounty or collateral benefit creating any material difference in rights.
81. I do not consider that the Backstop Fees fracture the proposed single class:
- (1) Each of the Interim Facility Backstop Fee and the Super Senior Facility Backstop Fee is calculated as 4.00% of the aggregate backstop commitment under the relevant facility, which is consistent with fees paid by reference to

comparable transactions and reflects market pricing for the underwriting service provided by the Backstop Parties.

- (2) The Backstop Fees are paid in consideration of a commercial service, namely the provision of full underwriting of the Interim Facility and the New Super Senior Facility, which involves the assumption of execution risk by the Backstop Parties.
- (3) The Steering Committee, whose members are the Backstop Parties, was the most commercially viable source for the provision of both backstops: the Steering Committee members were the SFA Lenders leading the Scheme Creditors' negotiations with the Scheme Company, and the Backstops (including in particular the Interim Facility Backstop) were required to be in place before the execution of the Amended Lock-Up Agreement in order to give the Group and its directors certainty as to the Group's liquidity position.
- (4) The quantum of the Backstop Fees is not material when compared to the differential between the expected recoveries to Scheme Creditors under the Scheme and in the Insolvency Scenario. A Scheme Creditor who would otherwise consider the substantive aspects of the Scheme to be against its interests is unlikely to be persuaded to vote in favour of the Scheme by the payment of the Backstop Fees.

Payment of fees, costs and expenses of Steering Committee advisers

82. The Scheme Company bears all reasonable fees, costs and expenses of the advisers to the Steering Committee and SFA Lenders (except the Designated Lender). Many cases have held this does not fracture the class. Such payments differ from consent fees: they confer no bounty or net benefit, merely defraying expenses actually incurred by the creditor as a result of the Restructuring. In *Re Lecta Paper* [2019] EWHC 3615 (Ch) at [18], Zacaroli J (as he then was) held that the company bearing certain coordinating-committee fees did not fracture the class: only reimbursement of actually-incurred disbursements was in issue, and the fees were payable whether or not the scheme was sanctioned.

Investor Directors and governance rights

83. The rights of certain Scheme Creditors to nominate (and, where applicable, jointly propose the suspension or dismissal of) Investor Directors post-completion do not fracture the class. They are not personal, but attach to being one of the four largest Senior CVR Beneficiaries (individual nomination) or holding at least 50.1% of the Junior CVR Beneficiary position by value (joint nomination). See *Re Hibu Group Ltd* [2016] EWHC 1921 (Ch) at [56] (Warren J); *Re New Look Financing plc* [2021] 2 BCLC 776 at [40] (Miles J); *Re Nostrum Oil & Gas plc* [2022] EWHC 1646 (Ch) at [37] (Meade J).

Scheme Creditors that are Sanctions Disqualified Persons

84. Unless exempted by a Sanctions Licence, a Scheme Creditor's status as a Sanctions Disqualified Person has certain consequences under the Scheme: (i) it may be precluded from voting; (ii) its Restructuring entitlements will be paid into the Holding Period

Trust rather than transferred directly; and (iii) it may not be able to participate in the Interim Facility and/or the New Super Senior Facility.

85. It has been established that a creditor's status as a Sanctions Disqualified Person is a personal characteristic, not a difference in legal rights, and is not a matter that goes to the issue of class composition: *Re Nostrum Oil & Gas plc* [2022] EWHC 1646 (Ch) at [40] *per* Meade J; *Re Praesidiad Ltd* [2024] 1 BCLC 506 at [31]–[34] *per* Sir Alastair Norris. The Scheme's mechanisms (including the Holding Period Trust) mean all Scheme Creditors receive the same entitlements under the Scheme's terms. What differs is how those entitlements may, under Sanctions law, be held and distributed.
86. Treating such personal characteristics as material differences in rights would require Sanctions Disqualified Persons to be placed in a separate class in many schemes, including virtually all noteholder schemes with holding period trust arrangements. Mr Al-Attar submitted, and (for present purposes, at least) I accept, that would be an obviously unsatisfactory outcome.

Contingent position of UniCredit

87. As noted previously, if a StaRUG is proposed, as a preliminary step UniCredit (as sole Ancillary Facility Lender) will transfer its Ancillary Facility Liabilities and commitments to certain SFA Lenders for an equivalent quantum of Existing Term Facility and/or Existing RCF liabilities. On completion, UniCredit will become an Existing Term Facility Lender and/or an Existing RCF Lender (and so a Scheme Creditor) for the exchanged Scheme Liabilities. Absent a StaRUG, neither the StaRUG Debt Exchange nor Scheme Creditor status for UniCredit arises.
88. If UniCredit becomes a Scheme Creditor before the Scheme Meeting, the Scheme Company considers it prudent to place it in a separate class. UniCredit will be entitled to the UniCredit Exchange (exchange of €2,000,000 of its Existing Term Loans or Existing RCF Outstandings for new loans under New Super Senior Facility Tranche A), which was separately negotiated to reflect UniCredit's particular role (as Fronting Bank, and its treatment of the UC EDEKA Guarantee compared with the repayment of the EDEKA Guarantee provided by Kreissparkasse Biberach), and is not available to any other Scheme Creditor.
89. The Scheme Company's primary position is that, even with the UniCredit Exchange, UniCredit's rights are not so dissimilar as to make consultation impossible (the exchange being a bespoke feature for a commercial service tied to UniCredit's role), and classes should not be proliferated unnecessarily (*Re OQ Chemicals* at [40]). Nonetheless, to avoid any class issue, UniCredit should be placed in its own class if it becomes a Scheme Creditor, with a separate Scheme Meeting convened for it.
90. In all these circumstances, subject to the contingent position of UniCredit, I adopt the Scheme Company's proposal that a single Scheme Meeting of the Scheme Creditors be convened to consider and, if thought fit, approve the Scheme.

The scheme meeting, documentation and timing

Timing between the Convening Hearing and the Scheme Meeting(s)

91. The proposed timetable is as follows:

Event	Date
Despatch of Scheme Documentation	On or around 6 May 2026
Voting and Proxy Deadline	5:00 p.m. (London time) on 1 June 2026
Record Time	5:00 p.m. (London time) on 1 June 2026
Scheme Meeting(s)	On or around 4 June 2026
Super Senior Facility Final Commitment Date	Business day after the Scheme Meeting
Sanction Hearing	On or around 15 June 2026
Restructuring Effective Date (Long-Stop Date)	30 June 2026 (subject to extension)

92. The Scheme Documentation (as defined in the draft order) will be made available to Eligible Scheme Creditors on the Debt Domain Website, and sent by email to Sanctions Disqualified Persons (including the Designated Scheme Creditor), as soon as reasonably practicable after the Convening Hearing. I accept that the timetable gives Scheme Creditors sufficient time to consider the Explanatory Statement.
93. The Scheme Meeting(s) will not be held until the OFAC Licence has been received by the Scheme Company. This is consistent with recent schemes involving creditors subject to US Sanctions. The issue is not one of enfranchisement or disenfranchisement, rather any deferral of the Scheme Meeting(s) would be voluntary on the part of the Scheme Company to enable US Sanctions compliance by Scheme Creditors, notwithstanding that U.S. law does not govern the Scheme Meetings and would fall to be analysed as a foreign criminal law whose direct or indirect effect would be excluded in the UK under English private international law: Dicey, Morris & Collins on the Conflict of Laws, 16th Ed, Rule 20 at 8R-001.

Conduct of the Scheme Meeting(s)

94. The Scheme Meeting(s) will take place on a hybrid basis, with Scheme Creditors entitled to attend and vote in person or by proxy. Eligible Scheme Creditors will be provided with a voting, proxy and election form.

Explanatory Statement

95. Whilst paragraphs [14]–[15] of the Practice Statement require the Court to consider the adequacy of the explanatory statement, the Court’s function is not to approve its text. The Court may, however, decline to convene the scheme meeting if it detects, or its attention is drawn to, manifest deficiencies in the document: *Re Indah Kiat International Finance Co BV* [2016] BCC 418 at [42] *per* Snowden J. There are no manifest deficiencies in the draft Explanatory Statement. The Scheme Company proposes that the Explanatory Statement be transmitted to Scheme Creditors by the means in the draft Convening Order, which are essentially those by which the PSL was transmitted.

The position of the Designated Lender, MeSoFa

96. A particular issue that arises in this case, which I have referred to above and is convenient to discuss in more detail now, is the position of MeSoFa *qua* creditor of the Scheme Company. MeSoFa is a body corporate registered under the laws of Austria and is in solvent liquidation there. It provided a loan of €30,000,000 under the SFA.
97. MeSoFa has raised objections not to the Scheme as such, but to its characterisation and treatment as a Designated Scheme Creditor, and has appeared before me by Counsel (Mr Nicholas Yeo KC and Mr Christopher Snell).
98. The basis on which MeSoFa has been so designated (and thus described in the PSL) is that (a) it is a person designated under the legislation and regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC", and such legislation, "the US Sanctions Laws"), and (b) one of its joint liquidators ("the Sanctioned Liquidator") is a designated person under the legislation and regulations administered by the UK Office of Financial Sanctions Implementation ("OFSI", and that legislation, "the UK Sanctions Laws"), and to the extent the Sanctioned Liquidator is deemed to control (under regulation 7 of the Russia (Sanctions) (EU Exit) Regulations 2019) the Designated Lender, the Designated Lender is also a sanctioned entity under UK Sanctions Laws. UK Sanctions Laws and US Sanctions Laws are together referred to as "the Sanctions". A person designated under, or owned or controlled (as so interpreted) by a person designated under, any Sanctions is referred to as a "Sanctions Disqualified Person". An SFA Lender that is not a Sanctions Disqualified Person is referred to as an "Eligible Lender", and a Scheme Creditor that is not a Sanctions Disqualified Person (or becomes eligible) is an "Eligible Scheme Creditor". Presently, and on the basis of the Sanctions, the Scheme Company does not feel able to treat MeSoFa as an Eligible Scheme Creditor; only as a Designated Lender/Designated Scheme Creditor.
99. The designation of the Designated Lender has two practical consequences relevant at this stage:
- (1) First, the Facility Agent and the Security Agent consider themselves arguably restricted under UK Sanctions Laws and/or US Sanctions Laws from accepting votes from the Designated Lender under the SFA and the Intercreditor Agreement, and certain SFA Lenders consider themselves restricted from voting to amend the terms of the Designated Lender's debt under US Sanctions Laws. Amendments to the material payment terms, maturities, ranking or order of priority under those agreements require the unanimous consent of all SFA Lenders. The existence of the Designated Lender therefore effectively precludes a fully consensual process for effecting the requisite amendments, to the extent that the Restructuring would otherwise have been capable of being implemented on this basis.
 - (2) Secondly, in order to implement the Restructuring the Scheme Company believes that (a) a licence from OFSI, or written confirmation from OFSI that no licence is required ("the OFSI Licence"), and (b) a licence from OFAC ("the OFAC Licence", and together with the OFSI Licence, "the Sanctions Licences"), will be required. Applications have been made for each of the Sanctions Licences. Consistently with recent cases involving creditors subject

to US Sanctions, the OFAC Licence will be required before the Scheme Meeting is held and the OFSI Licence will be required as a condition to completion of the Restructuring.

100. MeSoFa's position is, in summary, as follows:

- (1) MeSoFa accepts that it is subject to US OFAC sanctions, but contends that the sale of the relevant Term Loans is in any event expressly permitted under OFAC Licence No. MUL-2022-900756-9; and
- (2) The UK Sanctions analysis adopted by the Scheme Company is mistaken because MeSoFa is not a designated person under UK Sanctions Laws and (although MeSoFa accepts that he personally is a designated person, it is not "controlled" by Mr Barchugov within the meaning of regulation 7(4) of the 2019 Russia Regulations, because ownership and voting control reside with Mr Zöchling, and Mr Barchugov's powers as joint liquidator are tightly circumscribed by Austrian law (in particular §209 of the Aktiengesetz).
- (3) MeSoFa has been treated in a discriminatory way because, unlike other creditors, it has been denied an indemnity in respect of legal costs.

101. MeSoFa attended by Counsel at the Convening Hearing to explain that position and to canvass the process to be adopted for the resolution of what it described as "two primary issues", as follows:

- (1) MeSoFa alleged that it had been denied, and the Court should direct that it should be provided with, access to all material Scheme documentation distributed via the Debt Domain Website; and
- (2) MeSoFa contended that the Court should determine at the Convening Hearing, or as a preliminary issue, whether it has properly been designated and treated as a sanctioned entity under UK Sanctions Laws and accordingly excluded from voting and (according to Mr Yeo's skeleton argument) "*from the principal economic benefits of the Scheme*" by virtue of the fact that (a) it may not be able to participate in the Interim Facility and/or the New Super Senior Facility and (b) for so long as it is characterised as a Sanctions Disqualified Person its entitlements under the Scheme are not to be paid to it directly but are to be held for its benefit in a Holding Period Trust established under the Scheme.

102. However, at the Convening Hearing itself, MeSoFa by Counsel (and, Mr Yeo confirmed, on the instructions of its Joint Liquidators) substantially confined its case. In particular, Mr Yeo:

- (1) clarified that MeSoFa was not objecting to the Scheme itself, and that it was on this basis that it had concluded that the Practice Statement (and in particular paragraph 20) did not apply to its application which was made out of the time specified;
- (2) clarified that, having made no formal application nor filed any evidence, it could not seek a determination of the issue of its designation at this stage;

- (3) clarified further that it was not objecting to the composition of class meetings proposed, nor pressing for any resolution of the matters it had raised prior to those meetings being held;
 - (4) acknowledged (as its solicitors had made clear in correspondence) that because it is in liquidation it could not participate in the new money arrangements, irrespective of the Sanctions;
 - (5) conceded that, as matter of fact, it had not been denied documentation, nor materially disadvantaged by its exclusion (by reason of its status) from the Debt Domain Website, because it had been provided directly with the same documentation as had been made available to other creditors (albeit in their case not directly but via the Debt Domain Website);
 - (6) conceded that the issues it sought to raise were matters to be addressed at the Sanction Hearing rather than at this stage, and that on that analysis, its only remaining objection was to the payment of funds into the Holding Period Trust rather than directly to it; and
 - (7) accepted that, his only remaining objection (apart from the issue of costs) being to the payment of funds due to MeSoFa into the Holding Period Trust, his client would not suffer expropriation or any identified monetary harm unless the issue as to the application of Sanctions were not to be resolved within the Holding Period Trust period of two/three years.
103. Mr Yeo nevertheless pressed for resolution of MeSoFa's status at or before any Sanction Hearing. He estimated that this would take a day; and that about 21 days would be needed for evidence.
104. The question for my determination at the Convening Hearing in this regard thus became reduced to whether the Court should give directions for a preliminary issue to determine, at or before the Sanction Hearing, whether within the meaning of the UK Sanctions Regulations, MeSoFa is controlled by Mr Barchugov (a person undoubtedly subject to the Sanctions) as one of its two Joint Liquidators and whether, if so, it follows that MeSoFa has correctly been treated for the purpose of the Scheme as a Designated Lender.
105. On behalf of the Scheme Company, Mr Al-Attar disputed the need for any urgent determination of the remaining issue(s), especially in light of the clarification and confinement of MeSoFa's arguments.
106. He contended that the remaining issue should be determined in a freestanding Part 7 claim, and should not be deployed to delay the Scheme. MeSoFa's application was late, unsupported by any evidence, and failed in particular to abide by paragraph 20 of the Practice Direction. It should be seen for what (he submitted) it was: a hopeless case, calculated to introduce the threat of delay and thereby afford MeSoFa an unwarranted bargaining position to progress its aim of compelling another lender to buy its distressed debt at par. Both the lateness of the application and the fact that there was an easy and available solution to the Sanctions issue, being the removal of Mr Barchugov as Joint Liquidator (which had studiously been avoided) should also be weighed against the objection.

107. In any event, if the issue as to MeSoFa's status was to be explored seriously it would require both expert evidence of Austrian law as to the position and powers of a liquidator in a solvent liquidation under that law, but also an "intensely factual enquiry" as to who, in this case, actually controls the process. The Scheme Company would then have to answer this, and time be permitted for a reply. More than a day would be likely to be required for its resolution. This was difficult, if not impossible, to achieve within the time-table required.
108. Mr Al-Attar also made the point that the determination could only substantially affect whether payments should be made to the Holding Period Trust (rather than to MeSoFa directly). It could not affect the composition of class meetings, nor invalidate any vote approving the Scheme. MeSoFa's holding of 16% of the claims of Scheme Creditors could not affect the voting result, given existing support for the Scheme. Indeed, MeSoFa had emphasised that it did not object to the Scheme. The authorities made clear that (a) the Scheme Company was entitled to take a cautious approach to the Sanctions Regulations (see *Re SGB-SMIT GmbH* [2023] EWHC 1067 (Ch); and (b) whilst MeSoFa could make submissions at the Sanction Hearing as to the fairness or not of its exclusion from voting, it would be bound by the views of the majority, unless (in accordance with the usual approach) the court considered there had been oppression or self-interest sufficient to vitiate the result, which had nothing to do with the Sanctions (and see generally *In re Nostrum Oil & Gas PLC* [2022] EWHC 1646 (Ch)).
109. Mr Al Attar stressed also that even on the basis of the wider case which MeSoFa had appeared to be advancing in its skeleton argument it would not be necessary to undertake any kind of preliminary issue before making a convening order or holding consequential meeting(s).
110. I consider Mr Al-Attar's arguments to be compelling. In the end, Mr Yeo could not articulate any reason for the disruption of a preliminary issue to determine before sanction an issue which could safely be determined after it. Further, the application did, to my mind, smack of a delaying tactic in pursuit of commercial aims: its lateness, its reliance on points (such as the complaint that documentation had not been provided, which was without any real foundation) and what appeared to me (at first blush at any rate) to be the frail foundations of its case on the issue of MeSoFA's standing. In the latter context, I should indicate that I consider the Scheme Company's cautious approach understandable and (again at first blush) justified; and I see no sign or room for it being a tactic to side-line or negate an adverse vote, given the overwhelming existing support for the Scheme.
111. All that said, and as I sought to emphasise at the conclusion of the Convening Hearing, MeSoFa is in no way precluded from raising these points at the Sanction Hearing, though I cautioned that if they seemed pointless in terms of the business in hand on that occasion, MeSoFa would be at risk as to costs.

Are there any 'roadblocks' likely to preclude sanction?

112. The final matter to be determined is whether there are any 'roadblocks' such as to make it obvious, even at this stage, that the Court should refuse sanction.

Conditionality

113. The Restructuring is conditional on, amongst other conditions, receipt of the Sanctions Licences, on any inter-conditional StaRUG alongside the Scheme, and on extension of the local factoring facilities. The other conditions are set out in the implementation deed and include tax clearance from the German and Luxembourg tax authorities. These other conditions are usual and not material. Those which call for comment are addressed further below.
114. As noted, the Scheme Meeting(s) will not be held until the OFAC Licence has been issued, and the OFSI Licence (or written OFSI confirmation that none is required) will be a condition to completion. Applications have been made, engagement has taken place on the terms of the Scheme and the Restructuring, and there is no reason to suppose the Sanctions Licences will not be forthcoming. If a StaRUG is required, it will be a condition precedent to the Restructuring Effective Date that the StaRUG plan (*Planbestätigung*) has been approved by the competent German restructuring court, and either (i) the period for legal remedies has expired or (ii) the competent court of appeal (*Beschwerdegericht*) has finally rejected all immediate appeals (*sofortige Beschwerden*) filed in the appeal period. The Scheme and any StaRUG are expected to be inter-conditional. The Court has sanctioned schemes conditional on parallel foreign restructuring processes: see, e.g., *Re Steinhoff International Holdings NV* [2021] EWHC 184 (Ch) at [88]–[90].
115. More generally, in appropriate cases, the Court may sanction a scheme despite an outstanding condition. An outstanding foreign regulatory approval ‘*which there is no reason to suppose will not be granted*’ is one example: *Re Smile Telecoms Holdings* at [41]–[46], referring to *Re Lombard Medical Technologies Plc* [2014] EWHC 2457 (Ch) at [26].
116. I do not presently consider the conditionality of the Scheme to be a ‘roadblock’.

Sufficient connection

117. A separate issue is whether a ‘sufficient connection’ has been established with England and international effectiveness of the Scheme. Though allied to jurisdiction over a foreign company, sufficient connection is an aspect of the Court’s discretion at sanction, addressed at the convening stage under ‘roadblock’ so the Court can be satisfied there is no reason not to order meetings: *Re ColourOz Investment 2 LLC* [2020] BCC 926 at [57].
118. I consider that a sufficient connection with England has been established. The SFA and Intercreditor Agreement are English-law governed and confer exclusive jurisdiction on the English courts. The Scheme is necessary to compromise the English-law-governed Scheme Liabilities, which can (absent the Scheme or an equivalent English-law measure) only be discharged as a matter of English law: *Re OJSC International Bank of Azerbaijan* [2019] BCC 452. This basis has been endorsed in many cases: see e.g. *Re Light SA* [2024] EWHC 2733 (Ch) at [37]–[39] *per* Trower J.

International recognition

119. The Court does not have to determine at this stage (or even at the Sanction Hearing) that the scheme is certain to take effect in every relevant jurisdiction. The question is whether the Court is satisfied that there is a reasonable prospect of international recognition: *Re DTEK Energy BV* [2022] 1 BCLC 260 at [27] *per* Sir Alastair Norris.
120. The Scheme Company seeks permission to adduce expert evidence on recognition and/or effect of the Scheme in Germany (the key jurisdiction, being the Scheme Company's place of incorporation and COMI). Professor Thole has been engaged for this purpose. His evidence has been accepted by this court in like cases on several occasions. In materially similar cases (*Re Safari Holding Verwaltungs GmbH* [2022] EWHC 1156 (Ch) at [10] *per* Adam Johnson J; *Re AGPS Bondco plc* [2023] EWHC 916 (Ch) at [331]–[332] *per* Leech J), English schemes compromising English-law debt have been held likely to be recognised and given effect in Germany, even post-Brexit. Mr Al-Attar made the point that previous decisions on foreign law are admissible: Dicey, Morris and Collins, *On the Conflict of Laws* at 3-004 fn16 and 3-020 fn 109, referring to Civil Evidence Act 1972, s.4(2).
121. I am satisfied that the Court has sufficient reason at this stage to proceed on the basis that there is (at least) a reasonable prospect that the Scheme will be recognised and given effect in Germany, so that the exercise of this Court's jurisdiction would not be in vain.
122. Accordingly, whilst this may yet be revisited if the Scheme is approved by the Scheme Creditors and the matter proceeds to a hearing to determine whether it should receive the Court's sanction, I am persuaded for the present that there is no 'roadblock' evident now.

CONCLUSION

123. In all the circumstances, it has seemed to me that there is no reason why this Scheme should not proceed to the next stages and I made the Order sought by the Scheme Company for the convening of a one or two-class class hearing accordingly.