Neutral Citation Number: [2026] EWHC 2735 (BP)

Case No: CR-2025-008964

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
INSOLVENCY AND COMPANIES LIST

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

Date: 23 October 2026

Before :

The Honourable Mr Justice Hildyard

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In the matter of SCUR-Alpha 1092 GmbH

And in the matter of the Companies Act 2006

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- -

Mr Adam Al-Attar KC (instructed by **Latham and Watkins (London) LLP**) for the **Scheme Company**
Written Submissions of **Mr Nicholas Yeo KC** and **Mr Christopher Snell** on behalf of **MeSoFa Vermögensverwaltungs AG in Abwicklung** also considered

Hearing dates: 5 October 2026
Further written submissions post-hearing on 8 and 16 October 2026 as requested by the Court

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Approved Judgment

This judgment was handed down remotely at 14.30pm on 23 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE HILDYARD

Mr Justice Hildyard :

Introduction

1. SCUR-Alpha 1092 GmbH ("the Scheme Company**"**) now seeks an Order under section 899 of the Companies Act 2006 ("CA 2006") sanctioning the scheme of arrangement between the Scheme Company and the Scheme Creditors ("the Scheme") which has been approved by the requisite statutory majority of its Scheme Creditors at a Scheme Meeting ("the Scheme Meeting") held on 22 September 2026.

2. In a judgment dated 10 June 2026 ("the Convening Judgment", [2026] EWHC 1414 (Ch)) I set out in some detail the background to the Scheme, the context in which it was proposed, and its intended effect. This judgment should be read together with the Convening Judgment, subject of course to the particular matters I address now. I adopt the same definitions and abbreviations as in the Convening Judgment unless otherwise expressly stated, but there are numerous other capitalised terms used in the various documents comprising or to implement the Restructuring which (where necessary) are defined in this judgment.

3. In bare outline, the Scheme Company is a German holding company within the Schleich toy group ("the Group") and the borrower and a guarantor under the Senior Facilities Agreement ("the SFA"), which is governed by English law and confers exclusive jurisdiction on the English courts. The Scheme Liabilities are the Scheme Company's liabilities under the Existing Term Facility (€169,000,000, which matured on 22 August 2026 and stands deferred under the Lock-Up Agreement) and the Existing RCF (€20,000,000, which matured on 22 February 2026 and also stands deferred under the Lock-Up Agreement). There is a German-law Ancillary Facility provided by UniCredit Bank GmbH as sole Ancillary Facility lender ("UniCredit"). However, that facility and the Group's local lines are outside the Scheme.

4. At the Scheme Meeting, which was convened further to an Order dated 5 May 2026 ("the Convening Order"), 13 of the 14 Scheme Creditors, holding c. 97.4% by value, attended and voted. The Scheme was approved by 11 of them (c. 84.6% by number), holding c. 80.9% of the value voted. The two dissentients were the Designated Scheme Creditor, MeSoFa Vermögensverwaltungs AG in Abwicklung ("MeSoFa"), which holds c. 16% of the Scheme Liabilities, and an Existing RCF Lender holding c. 2.6%. One creditor, holding c. 2.6%, did not attend.

5. The Convening Order gave the Scheme Company liberty to convene a second meeting for UniCredit alone if it became an Eligible Scheme Creditor, which it did not. Accordingly, only one meeting was required.

Scope and focus of this Judgment

6. In this judgment, I focus principally on (a) developments and amendments to the Scheme made since the Convening Order and (b) the issue of discretion which is reserved to this stage of the proceedings. I also consider (c) an issue on which I invited further post-hearing written submissions, concerning the nature and enforceability of certain undertakings provided for in writing.

7. In particular, before dealing with the overall issue of discretion, I address four developments, which Counsel for the Scheme Company (Mr Adam Al-Attar KC) has carefully identified, but which he submits do not disturb the analysis on which the Convening Order was made. These are as follows:

   (1) On 2 July 2026 OFSI confirmed that MeSoFa is not owned or controlled by its designated joint liquidator, Mr Barchugov, within regulation 7 of the Russia (Sanctions) (EU Exit) Regulations 2019, and so is not subject to the UK asset freeze ("the OFSI Confirmation"). Upon receipt of the OFSI Confirmation, the Scheme Company at once admitted MeSoFa to the vote. That went beyond the terms of the Convening Order, and the Court is asked to approve it.

   (2) OFAC issued the licence required to implement the Restructuring on 6 July 2026 and reissued a slightly amended version of the licence on 18 August 2026 ("the Amended OFAC Licence"), on the condition that all property of MeSoFa resulting from the Restructuring be held on trust by the Holding Period Trustee until MeSoFa ceases to be subject to US sanctions or OFAC authorises its transfer ("the OFAC Licence Condition"). The Holding Period Trust Deed which sets out the terms of that trust ("the Holding Period Trust Deed") was amended to comply.

   (3) The Scheme Company has decided not to pursue a StaRUG. A contingent subordination structure ("the QR Structure"), binding all Scheme Creditors alike, has been added in its place, so that the Restructuring Opinion confirming that the proposed Restructuring will be in accordance with German law ("the Restructuring Opinion") can be given by the designated "Restructuring Opinion Provider", namely, EY-Parthenon GmbH.

   (4) The amendments were explained in a supplement to the original Explanatory Statement ("the Supplemental Explanatory Statement"), which was circulated in draft on 14 August and 11 September 2026 and in final form on 16 September 2026, and thus six days before the Scheme Meeting.

8. MeSoFa's Written Submissions, served on 10 June 2026 before any of those developments, state that it does not object to the Scheme, does not invite the Court to refuse sanction and does not intend to appear. Its primary submission, that no meeting had been held, is moot. Its secondary submission, that MeSoFa is not controlled by Mr Barchugov, has been answered in MeSoFa's favour by OFSI.

9. What remains is an objection to the Holding Period Trust, now put on the footing that MeSoFa's own OFAC licence makes the trust unnecessary, and a claim to costs, now also put under clause 23.3 of the SFA with a demand that the Scheme's release of claims under the "Existing Debt Documents" (as defined in the Scheme, including the SFA and Intercreditor Agreement) be deleted. The Court reserved MeSoFa's fairness points to this hearing, at MeSoFa's risk as to costs: see paragraph [111] of the Convening Judgment.

The Amendments since the Convening Order and their context and effect

10. Before explaining the amendments to the Scheme since the Convening Order, it may be helpful to summarise the effect of what is proposed by the Scheme overall (and for more detail, see paragraphs [15] to [42] in the Convening Judgment). In short, on the Restructuring Effective Date:

    (1) ownership of the Group passes from the Sponsor, through New Lion TopCo and New Lion Midco, to an autonomous Dutch foundation ("the Foundation", see paragraph [11] of the Convening Judgment);

    (2) a €119,600,000 New Super Senior Facility is established, comprising Tranche A (exchanged SFA and Interim Facility loans) and Tranche B (€16,000,000 of new money and any undrawn Interim Facility commitments): see paragraphs [17] to [23] of the Convening Judgment. Every Eligible Scheme Creditor could elect to participate pro rata, directly or through a designee, until the business day after the Scheme Meeting. In the event, at the Scheme Meeting, 10 of the 11 creditors voted in favour, holding c. 94.6% by value;

    (3) creditors that lent under the Interim Facility or the New Super Senior Facility elevate Existing Term Loans or Existing RCF Outstandings equal to 1.45x their commitment into Tranche A (and see paragraphs [19] and [72] of the Convening Judgment);

    (4) UniCredit exchanges €2,000,000 of its Ancillary Facility loans for Tranche A loans (and as to the UniCredit Exchange, see paragraphs [28(3)], [29] and [88] of the Convening Judgment);

    (5) the remaining Scheme Liabilities are exchanged pro rata into a €12,000,000 Restated Term Facility and a €35,000,000 New Holdco PIK Facility, and the balance is waived (see paragraphs [11] and [30] to [34] of the Convening Judgment);

    (6) the Foundation issues the CVR Entitlement, 60% for New Super Senior Facility lenders and 40% for Restated Term Facility lenders (see paragraph [35] of the Convening Judgment);

    (7) the Steering Committee members, as Backstop Parties, receive fees of 4.00% of the Interim Facility and of the €16,000,000 of new money (see paragraphs [80] to [82] of the Convening Judgment);

    (8) the entitlements of a Sanctions Disqualified Person are transferred to the Holding Period Trustee to be held on the terms of the Holding Period Trust Deed, unless the Sanctions Licences authorise direct distribution (see paragraphs [86] and [101(2)] of the Convening Judgment); and

    (9) Total debt (excluding local lines) falls from €241,000,000 to €166,600,000 (see paragraphs [36]-[37] of the Convening Judgment).

11. The amendments fall into five groups and are described in the Scheme Company's skeleton argument and in the evidence of Dr Manfred Ziegler, a managing director of the Scheme Company ("Dr Ziegler"), as follows:

(1) No StaRUG; the QR Structure proposed instead

12. A StaRUG was in contemplation at convening so that OpCo might compromise potential liabilities to the German tax authorities ("the Potential Tax Liabilities") of up to c. €21,800,000: see paragraph [13(2)] of the Convening Judgment. Further discussions with the German tax authorities have reduced the Group's assessment of that risk, and Dr Ziegler has explained (in his second witness statement) that the Scheme Company and the Steering Committee have concluded that a StaRUG would cost more than it is worth. There was therefore one Scheme Meeting, UniCredit is not a Scheme Creditor, and the UniCredit Exchange proceeds from UniCredit's Ancillary Facility loans, the second of the two routes described at [28(3)] of the Convening Judgment.

13. Since the Potential Tax Liabilities are not compromised, the Restructuring Opinion Provider must treat their maximum amount as a liability arising in 2028 or 2029. On the Group's latest figures, that would take the total net leverage of the Group ("the QR Leverage") above the 4.00:1 threshold at which the Restructuring Opinion, which is a specified condition of the Restructuring ("a Restructuring Condition"), can be given. Dr Ziegler has explained (in his second witness statement) that what he refers to as "the QR Structure" is the solution to this which has been agreed with the Steering Committee.

14. The QR Structure is to be given effect by amendments to certain of the Restructuring Documents to be made if (and only if) there is a "QR Trigger Event" (that is to say, crystallisation of the Potential Tax Liabilities in an amount exceeding the threshold required for the Restructuring Opinion Provider to sign off on the Restructuring Opinion ("the Maximum Leverage Threshold")). Under "the QR Undertaking", which is a Core Restructuring Document (such as also are the Restructuring Implementation Deed and the Scheme) to be signed on the Restructuring Effective Date, the Scheme Creditors irrevocably instruct the Agents, if a QR Trigger Event occurs, to establish a deeply subordinated "QR Facility" (*qualifizierter Rangrücktritt*, section 39(1) No. 5 of the German Insolvency Code) under the Amended and Restated Senior Facilities Agreement ("the Amended SFA"). In that eventuality, existing loans then convert into new "QR Loans" in the reverse order of their ranking (Subordinated Liabilities under the Intercreditor Agreement, then Restated Term Facility loans, then the elevation loans in Tranche A), *pro rata* within each facility and capped at the amount needed; QR Loans are stapled, accrue PIK interest and no payment may be made to PIK lenders or CVR Beneficiaries while they are outstanding. The Scheme Company has also undertaken to use commercially reasonable endeavours to insure the Potential Tax Liabilities within two months of the Restructuring Effective Date.

15. Dr Ziegler has explained the solution as follows. The purpose of the amendments to relevant Finance Documents which are necessary to establish and implement the QR Structure ("the QR Amendments") is to provide for, to the extent that the Potential Tax Liabilities crystallise, the subordination of an amount of the existing commitments under the New Super Senior Facility and the Restated Term Facility liabilities as required at the relevant time to bring QR Leverage below the Maximum Leverage Threshold. Subject to certain conditions (fulfilment of which is required to be certified),

the QR Loans are to be de-subordinated and reinstated (and cease to constitute QR Loans) if and to the extent that, after a QR Trigger Event, such QR Loans exceed the QR Entitlement. (In summary, the QR Entitlement (which is defined in detail in the QR Term Sheet setting out the principal terms) is a measure of the amount of existing Loans required to be or to stay converted into (deeply subordinated) QR Loans to ensure that the Scheme Company leverage ratios will not exceed the Maximum Leverage Threshold of 4.0x.)

16. In other words, and put shortly, it is a mechanism to ensure, by deep subordination, that neither the crystallisation of Potential Tax Liabilities nor the QR Facility to be put in place to meet them falls to be treated as a debt liability for the purpose of the IDW S6 standard applied by the Restructuring Opinion Provider in the preparation of the Restructuring Opinion. (IDW S6 being the relevant standard prescribed for such a report by the Institut der Wirtschaftsprüfer ("IDW", the Institute of Public Auditors in Germany).)

17. The Restructuring Opinion Provider has confirmed that it can give the Restructuring Opinion if the Scheme is sanctioned and Dr Ziegler on behalf of the Scheme Company confirms that the QR Undertaking will be signed on or prior to the Restructuring Effective Date, and its Independent Business Review ("the IBR") of 31 July 2026, which is to be converted into the final Restructuring Opinion compliant with the IDW S6 standard after fulfilment of certain conditions, was circulated to all Scheme Creditors on 14 August 2026.

18. As to its impact on Scheme Creditors, Mr Al-Attar submits that the QR Structure does nothing on the Restructuring Effective Date, binds every Scheme Creditor equally, and creates no difference in rights. It has no effect on the comparator, because a QR Trigger Event cannot occur before the day-one valuation date. I assess these arguments later.

(2) Voting eligibility

19. Following OFSI's confirmation (on 2 July 2026) that it does not consider that for the purposes of regulation 7 of the Russia (Sanctions) (EU Exit) Regulations 2019 MeSoFa is owned or controlled by its designated joint liquidator, Mr Barchugov, and because the Amended OFAC Licence does not restrict MeSoFa from attending or voting, the Scheme Documentation was amended so that every Scheme Creditor not restricted by applicable Sanctions laws from voting could vote ("the Voting Eligible Scheme Creditors", comprising the Eligible Scheme Creditors and any "SDP Voting Eligible Scheme Creditor"). An SDP Voting Eligible Scheme Creditor may vote but, to comply with Sanctions laws and the Amended OFAC Licence, may not lend new money or receive its entitlements directly; they go into the Holding Period Trust.

20. Two forms of Scheme Creditor Letter were issued accordingly on 16 September 2026. At the date of the meeting, every Scheme Creditor was a Voting Eligible Scheme Creditor.

(3) The Holding Period Trust Deed

21. The Original Holding Period Trust Deed was amended to comply with the OFAC Licence Condition and, in part, to meet comments from MeSoFa received on 31 August and 14 September 2026.

22. For a beneficiary that is not a Sanctions Disqualified Person the terms are unchanged. For one that is, the "Initial Holding Period" runs (i) if it ceases to be a Sanctions Disqualified Person, for the longer of 24 months from the Restructuring Effective Date and six months from that cessation; (ii) if it obtains an authorisation permitting transfer of its Trust Property to it (a "Beneficiary Transfer Sanctions Authorisation"), for the longer of 24 months and the date of that transfer; and (iii) otherwise, indefinitely. In the last case, after the third anniversary of the Restructuring Effective Date the Scheme Company or the Holding Period Trustee may seek a Sanctions authorisation to transfer the Trust Property to a "Sanctions Alternative Transferee", the Trust Property or its consideration remaining on trust unless and until transferred or delivered in accordance with the Scheme, the deed and the Amended OFAC Licence.

23. A Sanctions Disqualified Person that obtains such an authorisation is an "Eligible Person" like any other; the reversion of unclaimed Trust Property to the Scheme Company at the end of the "Additional Holding Period" (being the period of 12 months following the expiry of the Initial Holding Period) has been moved to the Amended Scheme Document for UK tax reasons; and i2 Capital Markets, the trustee named in the Amended OFAC Licence, may not resign or be replaced without the Sanctions authorisations a replacement would need.

(4) Other amendments

24. The Deed of Release to be entered into (in its agreed form) as one of the Core Restructuring Documents was amended so that the releases given by the Parent and the Obligors do not extend to claims against other Group entities or their representatives (other than "Sponsor Released Parties", as defined in the Deed of Release).

25. The remaining amendments are minor or technical. The September Amended Lock-Up Agreement appends an updated Term Sheet recording the QR Amendments and the Holding Period Trust terms, reflects the other amendments summarised in the Supplemental Explanatory Statement, and records further temporary waivers and consents, in particular the deferral of all interest owed to the Consenting Creditors (that is to say, those creditors who agreed to the lock-up agreements) falling due under the Existing Term Facility, the Existing RCF and the Ancillary Facility prior to the Deferred Payment Date, to the Deferred Payment Date. Dr Ziegler has confirmed that it was sent to all Scheme Creditors, including MeSoFa, on 22 September 2026.

(5) Overall effect of amendments

26. As noted above, the Scheme Company submits that none of these amendments alters the rights which the Scheme releases or confers as between Scheme Creditors.

27. In particular, Mr Al-Attar stressed the following points:

    (1) every creditor's Scheme Liabilities are exchanged and waived in the same proportions as before;

    (2) the QR Structure binds all alike; the widening of the franchise gave a vote to the one creditor who previously lacked one;

(3) the changes to the Holding Period Trust Deed concern the manner in which a Sanctions Disqualified Person's entitlements are held, which goes to enjoyment and not to rights: and see paragraph [85] of the Convening Judgment; and accordingly

(4) he submits that the class analysis at paragraphs [63] to [90] of the Convening Judgment holds for the Scheme in its amended form as voted upon.

Procedural history, the Scheme Meeting and the vote

The Convening Order and the postponement of the meeting

28. The Convening Order gave the Scheme Company liberty to convene the meeting on 4 June 2026 '*or at such later time or date as the Scheme Company may decide and communicate to the Scheme Creditors on 2 days' notice*' (paragraph 1), in person and remotely with a virtual breakout room (paragraph 2).

29. It was further directed that the Scheme Documents be posted on a website maintained by the Facility Agent as a means of communicating with Scheme Creditors ("the Debt Domain Website") and emailed to any Sanctions Disqualified Person, and that the Scheme Creditor Letter, Voting and Proxy Form and notice of meeting be sent to Eligible Scheme Creditors once the Scheme Company confirmed receipt of the OFAC Licence (paragraphs 3 and 6).

30. The Directions confined voting to Eligible Scheme Creditors delivering a Voting and Proxy Form before the Record Time of 5.00 p.m. on 1 June 2026 (paragraphs 7 and 8); appointed Dr Ziegler or, if unable to act, Bruce Bell or Hugo Bowkett as Chair, with liberty to value claims as at the Record Time and to accept late forms received before the meeting closed (paragraphs 10 to 14); gave permission for the Comparator Report and Professor Thole's report as expert evidence (paragraph 22); and refused MeSoFa's applications (paragraph 24).

31. The Original Explanatory Statement dated 8 May 2026, with the Original Scheme Document, the Comparator Report and drafts of the Restructuring Documents, was distributed that day in the two modes approved at [56] and [92] of the Convening Judgment by the Facility Agent on the Debt Domain Website, and by Linklaters for the Facility Agent to MeSoFa and its solicitors, Gherson LLP ("Gherson"), by email. Every later distribution was made in the same two modes.

32. As I accepted in paragraphs [93] and [99(2)] of the Convening Judgment, the meeting was not to be held until the OFAC Licence had been received. It had not been by 1 June 2026, and on that day the Scheme Company gave notice that the meeting would not be held on 4 June 2026, and that a further notice would fix the date.

The Sanctions Licences

33. Applications were made to OFSI and OFAC in December 2025.

34. On 2 July 2026 OFSI wrote that in its view the regulation 7 ownership and control test was not satisfied, that MeSoFa was therefore not subject to the asset freeze, that the licence previously issued for interest payments to MeSoFa was revoked, and that the application for a licence in respect of the Restructuring was closed. On that basis, no OFSI licence is required.

35. On 6 July 2026 OFAC issued Licence No. MUL-2026-1451921-1 on the terms of the Alternative Licence described in Dr Ziegler's first statement, with a Blocking Condition requiring MeSoFa's Restructuring property to be held in a blocked account at a US institution. Following further exchanges with OFAC with respect to that Blocking Condition, which would have made the proposed Restructuring difficult if not impossible to implement, OFAC replaced that condition on 18 August 2026 with the OFAC Licence Condition: all property and interests in property of MeSoFa resulting from the Restructuring are to be held on trust by the Holding Period Trustee until MeSoFa is no longer subject to US sanctions or OFAC separately authorises the transfer. It was circulated to all Scheme Creditors on 20 August 2026. In these circumstances, the Restructuring Condition relating to the Sanctions Licences is satisfied.

The Supplemental Explanatory Statement

36. Drafts of the Supplemental Explanatory Statement and the amended Restructuring Documents, with redlines, were distributed on 14 August 2026 and, so far as the Amended OFAC Licence required further changes, on 11 September 2026 with an invitation to comment by 15 September 2026.

37. The final Supplemental Explanatory Statement, its appendices and changed-page redlines were distributed on 16 September 2026 with the Notice of Scheme Meeting, the Amended Voting and Election Guidance and the two forms of Scheme Creditor Letter.

38. Mr Al-Attar acknowledged that the final Supplemental Explanatory Statement was long (just short of 2,000 pages), and (necessarily, he submitted) detailed and complex. He pointed out also that, although short, the six days' notice given was three times the notice paragraph 1(a) of the Convening Order required for a rescheduled meeting. However, and to my mind more persuasively, he emphasised also that

    (1) the Original Explanatory Statement, the Original Scheme Document and the Comparator Report had been available to Scheme Creditors since 8 May 2026, and the economics of the Restructuring are unchanged since then;

    (2) the one amendment of commercial substance, the QR Structure, was circulated in draft with the QR Undertaking, the QR Term Sheet and the Independent Business Review on 14 August 2026, five and a half weeks before the meeting, with revised drafts of the principal documents and full and changed-page redlines;

(3) the Amended Holding Period Trust Deed, the only document responsive to the Amended OFAC Licence of 18 August 2026, followed in draft on 11 September 2026 with an invitation to comment by 15 September 2026; MeSoFa commented on 31 August and 14 September 2026 and some of its comments were taken;

(4) the final documents were in substantially the form of those drafts, with changed-page redlines showing what had moved. The final distribution could not go earlier because the documents had to be conformed to the OFAC Licence Condition, imposed on 18 August 2026 in place of the Blocking Condition; and

(5) the Scheme Creditors are 14 sophisticated institutions which have followed the Restructuring since 2025; 13 voted; MeSoFa, separately represented throughout, completed its form on 17 September 2026 and voted; and Dr Ziegler states in his second witness statement that no creditor asked for more time or has complained of the time allowed.

39. In submissions further addressed below, he submitted that this was sufficient notice in all the circumstances.

The Scheme Meeting and the vote

40. The Scheme Meeting was held on 22 September 2026 at the offices of Latham and Watkins (London) LLP and concurrently by Zoom. Mr Bowkett chaired. The Chair's Report records the result:

	By value (as admitted by the Chair)	**By number**
Present and voting	€208,693,768.05	13
For	€168,853,088.01 (c. 80.9%)	11 (c. 84.6%)
Against	€39,840,680.04 (c. 19.1%)	2

41. Ten of the 11 Existing Term Facility Lenders voting (c. 82.1% by value) and one of the two Existing RCF Lenders voting (c. 66%) voted in favour.

42. Dr Ziegler has provided further details of the constitution of the majority. Of the 11 creditors voting in favour, all are party to the Lock-Up Agreement; nine are members of the Steering Committee (c. 92.6% of the value voting in favour); ten lent under the Interim Facility (c. 94.6%); ten elected to participate in the New Super Senior Facility (c. 94.6%); and eight are Backstop Parties. Two creditors outside the Steering Committee, three that receive no Backstop Fee, one that lent no Interim Facility money and one that took no New Super Senior Facility therefore voted in favour.

43. Notice of the approval and of this hearing was given to all Scheme Creditors on 22 September 2026, the expected date having been notified in the Supplemental Explanatory Statement.

44. HMRC confirmed on 20 May 2026 that it has no objection to registration of the sanction order.

MeSoFa since the convening hearing

45. In his first witness statement in support of what became the Convening Order, Dr Ziegler described the Scheme Company's dealings with MeSoFa up to that point. This was supplemented in the first witness statement, dated 3 May 2026, of Rory Conway, a partner at Linklaters LLP, the English legal adviser to UniCredit.

46. Mr Al-Attar drew my attention to the need for a correction to Mr Conway's first witness statement. This is that a reconciliation after the hearing found c. 35 documents, largely lender presentations and cashflow forecasts from the early months of the Restructuring, which had been posted on the Debt Domain Website but were not forwarded to MeSoFa. MeSoFa was told of this omission on 14 May 2026. However, Mr Al-Attar submitted that the documents were by then superseded by material MeSoFa had received, including the IDW S6 Opinion, the Comparator Report and the Explanatory Statement; and in the event, nothing turns on the omitted documents; and MeSoFa does not renew its documentation complaint.

47. Since then, so far as material, Dr Ziegler's second witness statement (dated 29 September 2026) explained that:

    (1) On 1 June 2026 Gherson asked for the voting form and said MeSoFa would vote against; however, paragraphs 3 and 8 of the Convening Order did not permit the form to be sent until the OFAC Licence had been received.

    (2) On 19 and 21 August 2026 Latham and Watkins confirmed to Gherson that the Scheme Company was aware of no reason why MeSoFa would not meet the criteria to be an SDP Voting Eligible Scheme Creditor, that all Scheme Creditors are on the same terms as to receipt of their entitlements, that MeSoFa would receive an Eligible Scheme Creditor Letter if it became an Eligible Transferee before its entitlements were transferred, and that otherwise the Amended OFAC Licence required them to be held in trust by i2 Capital Markets.

    (3) On 26 and 31 August and 14 September 2026 MeSoFa's Austrian lawyers, Hausmaninger Kletter, wrote that MeSoFa's existing OFAC wind-down licence meant that no further licence had been required from OFAC and the trust had no legal basis and '*should be abolished*', that MeSoFa had received no details of the Holding Period Trust Deed, and that MeSoFa should be paid its legal costs of €345,871 and held harmless for the future; they also commented on the draft Amended Holding Period Trust Deed on 14 September 2026.

    (4) Latham and Watkins replied on 16 September 2026, explaining the Holding Period Trust, pointing out that the draft deed had been provided before the Convening Hearing, on 8 May and on 11 September 2026, confirming that MeSoFa would receive its entitlements directly if it were an Eligible Transferee on the Restructuring Effective Date, answering each comment on the Holding Period Trust Deed (some of which were accommodated), and declining to pay MeSoFa's costs.

    (5) On 17 September 2026 MeSoFa submitted a valid SDP Voting Eligible Scheme Creditor Letter. It voted against the Scheme on 22 September 2026.

(6) On 18 September 2026 MeSoFa served a letter of demand ("MeSoFa's Letter of Demand") claiming €123,520.55 and £191,962.32, said to total €347,174.66, under clause 23.3 (*Enforcement and preservation costs*) of the SFA, with fee notes going back to 2023, and asking that clause 12.2(b) of the Amended Scheme Document, which releases claims under the Existing Debt Documents, be deleted.

(7) The Scheme Company rejected the demand on 28 September 2026, pointing out that clause 23.3 requires a nexus between the costs and the enforcement or preservation of a Finance Party's rights ("a Finance Party" being defined in the Amended SFA to mean i2 Capital Markets Ltd as Agent, i2 Capital Trust Corporation Ltd as security agent for the Secured Parties (being parties to the SFA and the Intercreditor Agreement) or any Lender (being a party to the SFA)). MeSoFa's costs were incurred in a dispute with the Facility Agent about its own sanctions status; no right is presently exercisable under the waivers and forbearances in force nor was any right exercisable at the time MeSoFa's interest was withheld by the Facility Agent; and the Scheme Company's policy is not to agree to fund individual creditors' costs.

Compliance with statutory requirements and the Convening Order

48. The above being, I consider, a sufficient description of the evidence provided as to the background, factual circumstances and stated objectives of the Scheme, I turn to Mr Al-Attar's submissions that:

(1) the statutory preconditions to the exercise of the Court's power to sanction a scheme have been fulfilled;

(2) the majority in favour of the Scheme is acting bona fide and not for some improper or collateral purpose;

(3) the Scheme is one that an intelligent and honest man might reasonably approve;

(4) the Scheme is fair, including to dissentients like MeSoFa; and

(5) in its discretion, the Court should sanction the Scheme.

49. I address these submissions below.

Class composition

50. A scheme must be approved by the majority votes prescribed by statute at class meetings convened in accordance with directions given by the Court. I set out the applicable principles, how I considered they should in the particular case be applied, and the reasons for my conclusion that a single class meeting would suffice (subject to the need for a separate meeting if UniCredit became a Scheme Creditor) in paragraphs [63] to [67] (the principles), [68] to [86] (their application) and [87] to [90] (why a single meeting would be sufficient) of the Convening Judgment.

51. No objection was raised at the Convening Hearing; and in its written submissions for that hearing MeSoFa expressly stated that it did not object to there being a single class meeting. No objection has been raised since the Convening Order. Unless there has

been some amendment or change in circumstances which impacts on the issue, the Court will not ordinarily revisit the issue at the Sanction Hearing if it has been considered carefully at the Convening Hearing: *Re Hawk Insurance Co Ltd* [2001] 2 BCLC 480 at [21] (Chadwick LJ); *Re Global Garden Products Italy SpA* [2017] BCC 637 at [43]-[44] (Snowden J).

52. I accept Mr Al-Attar's submission that nothing since has occurred which materially bears on the issue: the amendments create no difference in rights, the contingent second class for UniCredit has fallen away, and the split vote between the two Existing RCF Lenders reflects a difference of view, not of rights: see [69]-[71] of the Convening Judgment. Accordingly, I consider that, since UniCredit did not become a Scheme Creditor, the single class meeting was properly constituted for the reasons previously set out.

Compliance with the Convening Order

53. The Scheme Meeting was convened and held in accordance with the Convening Order in all respects save two, the Record Time and the franchise:

(1) The Scheme Documents were distributed as paragraphs 3, 4 and 6 directed.

(2) The meeting was held on 22 September 2026 rather than 4 June 2026, as paragraph 1(a) permitted on two days' notice. The Scheme Company gave notice on 1 June 2026 that the meeting would not be held on 4 June 2026 and on 16 September 2026 of the new date, six days ahead. The Court had in any event accepted at paragraph [93] of the Convening Judgment that the meeting would await the OFAC Licence.

(3) Paragraph 8 fixed the Record Time at 5.00 p.m. on 1 June 2026, the time by which Voting and Proxy Forms were to be delivered and as at which claims were to be valued (paragraph 12), on the footing that the meeting would follow on 4 June 2026. Once the meeting was postponed for want of the OFAC Licence, which did not issue until 6 July 2026 and before which paragraph 8 itself forbade the delivery of any form, that date had to be changed. The Notice of Scheme Meeting of 16 September 2026 fixed a Record Time of 5.00 p.m. on 18 September 2026, as at which the Chair valued claims and admitted votes: Chair's Report. The Chair was in any event at liberty under paragraph 14 to accept forms received after the Record Time and before the meeting closed, so every form received in September 2026 was one he could admit under the Order as made; and valuing claims at a later date adds only accrued interest, *pro rata* across all Scheme Creditors, and could not have affected the result. To the extent necessary, I have been invited, and I am content, to approve the revised Record Time.

(4) Paragraphs 1(a), 7 and 8 confine attendance and voting to Eligible Scheme Creditors, and paragraph 6 provides for a Sanctions Disqualified Person to receive the Scheme Documents only. Those provisions reflected the assumption at the Convening Hearing that the Sanctions would preclude MeSoFa from voting: see paragraphs [84] and [99(1)] of the Convening Judgment. Admitting MeSoFa as an SDP Voting Eligible Scheme Creditor went beyond their letter, and the Scheme Company did not return to Court to vary them. Once the OFSI

Confirmation had removed the UK ground for exclusion and the Amended OFAC Licence had been found not to restrict voting, the Scheme Company took the view that the fair course was to admit MeSoFa to the vote, told Gherson so on 19 August 2026, and MeSoFa completed the form and voted without objection. The Scheme Company seeks the Court's retrospective approval of that course. That is on the basis that it enlarged rather than restricted the franchise, was disclosed to every Scheme Creditor before the meeting, and prejudiced no one; and it is thus the opposite of the disenfranchisement considered in *Re Nostrum Oil & Gas plc* [2022] EWHC 1646 (Ch) at [42] and *Re VEON Holdings BV* [2022] EWHC 3473 (Ch). Its effect is also to remove the premise of MeSoFa's complaint at [9] of its Written Submissions that a creditor prevented from voting cannot be fairly represented. Further, Mr Al-Attar points out that the result is the same on either franchise: disregarding MeSoFa's vote, the Scheme was approved by 11 of the 12 creditors voting, holding c. 96.8% by value of the votes cast. With a general warning that ordinarily the appropriate course is to seek the Court's approval in advance, I am content, in the particular circumstances, to confirm the retrospective approval sought.

(5) Mr Bowkett, appointed in the alternative by paragraph 10, chaired the meeting, which was held in person and by Zoom with a virtual breakout room as paragraph 2 required, and has reported to the Court in the Chair's Report. The Claim Form has been restored as paragraph 20 contemplated.

The Explanatory Statement

54. The statement required by section 897 CA 2006 need not contain the fullest information reasonably obtainable, but it must be sufficient to enable creditors to evaluate what is proposed and make an informed decision whether to approve it: *Re Amicus Finance plc* [2022] Bus LR 86 at [37]-[38].

55. I considered this in paragraph [95] of the Convening Judgment. I considered then that there was no manifest deficiency in the Original Explanatory Statement, which was distributed in substantially that form.

56. That Original Explanatory Statement has been supplemented, not replaced: the Supplemental Explanatory Statement explains each amendment and its reason, appends the amended documents, and was preceded by drafts and redlines at each stage. The directors' interests are stated at Section 9.13 of the Original Explanatory Statement. Dr Ziegler has confirmed compliance with the statute and the Practice Statement, and no creditor has said anything to the contrary.

57. Because the amendments were put to the Scheme Creditors before the meeting, the Scheme before the Court is the Scheme the creditors voted upon. The Court is not asked to approve a post-meeting modification, and the concern in *Re_Plusholding GmbH* [2024] EWHC 828 (Ch) at [20]-[22] (Rajah J), *Re Equitable Life Assurance Society* [2002] BCC 319 at [102] and *Re Aon plc* [2020] EWHC 1003 (Ch) at [17]-[18], that a modified scheme must not be foisted on creditors who voted on something else, does not arise.

58. The only questions are whether the amendments were permissible without further order of the Court, whether they affected the class and whether the creditors were properly informed of them.

59. I note that the Convening Order contemplated potential modification: paragraph 2 convened the meeting to approve the Scheme '*with or without modification*'. Mr Al-Attar acknowledged that paragraph 5 of the Convening Order permitted only minor modifications to the documents as distributed, but submitted that this (quoting his skeleton argument) "*governed the 8 May distribution and was complied with"*. Presumably on that basis, and (quoting again from the skeleton argument) "*because none of the amendments touched the class"*, the Scheme Company did not return to Court to seek a confirmatory order of the kind Meade J noted in *Re Standard Profil Automotive GmbH* [2025] EWHC 2133 (Ch) at [6] had been obtained after the convening hearing in that case.

60. I have been a little troubled by this course. I consider that Mr Al-Attar is technically correct that paragraph 5 of the Convening Order applied only to the *"Scheme Documents"* as defined in paragraph 3, and that therefore the extent of permissible modification was not defined in the Convening Order. However, the Convening Order did not contemplate modifications to the documents (and in particular the Scheme) as sent out on 8 May 2026 being such as to warrant and indeed require a supplemental explanatory statement. The fact is that the Scheme was modified materially after the Convening Order, and that required explanation. The question is whether, in consequence, compliance with the Convening Order was deficient. Mr Al-Attar's fall-back is to invite the Court, again retrospectively, to approve the course taken, which the Scheme Creditors have themselves approved by their vote.

61. With more emphasis than expressed in paragraph [53(4)] above in the context of the extension of the franchise, I would sound a warning that, in my view, it would usually be the better course, where there is a material change in the documents ultimately placed before the class meeting(s) for approval and those which were before the Court, to refer the matter back to the Court (and preferably, obviously, to the Judge who made the relevant convening order). The further expense is likely to be relatively small, and if necessary, in my view (though obviously other judges may not welcome this) the nature of the modification may be described in a letter and the Judge invited to direct whether the matter requires a hearing or can be dealt with more informally. In any event, in my view, it is the Court which has directed convening of the meetings, and the Court which should be made aware of any material change before they take place, and be persuaded that they are not such as to cause it to review its directions or (most importantly) alter the class composition directed.

62. Nevertheless, I accept that the modifications, though material, were less significant than those which persuaded the scheme company to return to court in the *Standard Profil* case; and I accept, in particular, that in this case, none of the amendments touched the class. Further, I am satisfied that (subject to the question of timing which I consider next) the explanation provided in the Supplemental Explanatory Statement was clear and comprehensible.

63. In summary, in the particular circumstances, I do not consider that the departure from what was envisaged at the time of the Convening Order, and the course of self-help

adopted, are such as to warrant upsetting the results of the meeting as expressed by such a weighty majority.

Timing and adequacy of notice

64. I have rehearsed details of the relevant chronology in paragraphs [36] to [38] above. As Mr Al-Attar submitted, the adequacy of the period for consideration turns on the complexity of the scheme, the urgency of the company's position and the sophistication of the creditors: *Re Selecta Finance UK Ltd* [2021] BCC 168 at [37]-[41].

65. No great urgency was asserted; and, without more, the complexity and length of the documents would have made the six days allowed inadequate. However, there is more, as I have described. The iterative provision of information from 8 May 2026 onwards seems to me to have been fair and sufficient. This is not a case like *Re Sunbird Business Services Ltd* [2020] EWHC 2493 (Ch) (Snowden J), where sanction was refused because the explanatory statement was found to be inadequate in light of a material change to it of which creditors were not told, and of a process from which the court had been kept in the dark. This case is the reverse. I accept that the class was fully and sufficiently consulted, and placed in a position to assess the proposals and vote in an informed way upon them.

66. For completeness in that context, I confirm that I am aware that (as pointed out by Dr Ziegler in his second witness statement) the revised draft of the Restructuring Opinion taking into account the QR Structure was not available to be shared with Scheme Creditors prior to the Scheme Meeting. I accept the Scheme Company's submission that, in the particular circumstances, this did not materially prejudice the Scheme Creditors or cast doubt on their vote. As already noted above, the QR Structure was sufficiently explained prior to the Scheme Meeting. The Restructuring Opinion Provider has confirmed that it will be able to issue the Restructuring Opinion prior to closing provided the QR Undertaking is entered into on the Restructuring Effective Date. Furthermore, the IBR, prepared in accordance with the requirements for an IDW S6 opinion, was made available to all Scheme Creditors with the Supplemental Explanatory Statement.

The majorities approving

67. The Scheme was approved by 11 of 13 creditors present and voting (c. 84.6%) holding c. 80.9% by value. Both limbs of section 899(1) are satisfied, and not narrowly: counting every creditor that did not vote in favour, including the absentee, as a vote against, the Scheme was approved by 11 of 14 creditors (c. 78.6%) holding c. 78.8% of all Scheme Liabilities. It would have passed on any view of the franchise. In my judgment, the statutory requirements as to the requisite majority approval have been satisfied.

Fair Representation and the bona fides of the majority

68. Approval by the prescribed statutory majorities is necessary, but not of itself sufficient. If the vote is unrepresentative of the class, the Court cannot treat it as an expression of the interests of the class and must scrutinise the scheme to a greater degree than merely applying a rationality test: *Re ALL Scheme Ltd* [2022] EWHC 1318 (Ch) at [51]-[52] (Trower J).

69. However, a majority is not disqualified by having interests of its own; the question is whether those interests are adverse to the class, or so distinct from its interests as a class member that its vote cannot be taken as cast with those interests in mind: *Re Dee Valley Group plc* [2017] EWHC 184 (Ch) at [42]-[47]; *Telewest Communications plc (No 1)* [2005] 1 BCLC 752 at [22] (*per* David Richards J (as he then was) at the convening stage).

70. I have explained in the Convening Judgment why I was satisfied at that stage that none of the arrangements introduced a "fracturing element". I remain satisfied in that regard.

71. Turnout was as high as it could realistically be: 13 of 14 creditors, c. 97.4% by value. Every creditor wishing to vote could do so, and all but one did. I have noted that all 11 creditors voting in favour are party to the Lock-Up Agreement, that nine are Steering Committee members and that eight receive the Backstop Fees. Just as I was satisfied at the Convening Hearing that none of these arrangements introduced a fracturing element so far as concerned class constitution (see paragraphs [74] to [82] of the Convening Judgment), I am satisfied now that none renders the vote unrepresentative or the majority's interests adverse to the class:

    (1) Entry into a lock-up agreement does not discount a vote: *Re Telewest Communications plc (No 1)* [2005] 1 BCLC 752 at [53]. Accession was open to every Scheme Creditor other than a Sanctions Disqualified Person, and the Scheme affects a locked-up creditor's rights exactly as it affects any other.

    (2) The right to elevate was available to every Eligible Scheme Creditor on the same *pro rata* terms, in the Interim Facility until 17 April 2026 and in the New Super Senior Facility until the day after the meeting, directly or through a designee: paragraphs [72] and [78] of the Convening Judgment. Differing take-up flows from a difference of perceived interest, not of rights: *Re OQ Chemicals Holding Drei GmbH* [2024] EWHC 2036 (Ch) at [47].

    (3) I have already indicated **(**at [80]-[81] of the Convening Judgment) that I am satisfied that the Backstop Fees are market-rate consideration for a commercial underwriting service which the Steering Committee was the most viable source of, and that their quantum is not disproportionate against the difference between recoveries under the Scheme and in the Insolvency Scenario.

    (4) Support from creditors outside the committee which negotiated the scheme is a relevant, and may be a decisive, indication that the terms benefiting the committee did not drive the vote: *Standard Profil* [2025] EWHC 2313 (Ch) at [9]-[10] in the judgment of Meade J at the sanction stage. Here two creditors outside the Steering Committee, three that receive no Backstop Fee, one that lent no Interim Facility money and one that took no New Super Senior Facility voted in favour. Of the three that did not, one abstained without objection, one has lodged nothing, and MeSoFa's reasons are its own: it has made no secret of its aim to be bought out by another lender, and to use its opposition to that end: Gherson's letter of 25 February 2026. That is a private interest and no reason to doubt the good faith of the majority.

72. In the round, I have concluded that there is no vitiating element such as to militate against accepting the vote of the majority as a reliable indication of an informed and positive response on the part of sophisticated investors to what is proposed.

The H.I.G. Transfer

73. Before turning to the test of rationality, I should address one additional matter which Mr Al-Attar identified as requiring mention. When the Interim Facility was drawn in July 2026, certain Allianz funds could not obtain internal approval to fund their share while the OFAC Licence, tax ruling and SüdFactoring conditions to drawdown remained unsatisfied. By a side letter dated 8 July 2026, their unfunded commitments of €3,820,151.72 were transferred to H.I.G., another Interim Facility Lender, which funded them, with the elevation entitlement and share of the Interim Facility Backstop Fee attaching to them. This was referred to as "the H.I.G. Transfer" and has been explained in Dr Ziegler's second witness statement.

74. The Steering Committee knew of the transfer before the side letter was signed, and every Interim Facility Lender learned of it on executing the fronting agreement for the July drawing, which listed each lender's funded commitment. The Interim Facility Lenders outside the Steering Committee were not invited to fund the Allianz share.

75. Although he entirely properly considered it appropriate to direct my specific attention to it, being an intercreditor dealing after the Convening Order but before the vote, Mr Al-Attar submitted that the H.I.G. Transfer raises no class or representation issue. Its effect was to transfer a commitment which already existed, with the rights already attaching to it under the Interim Facility Agreement and the Lock-Up Agreement, between two creditors on terms agreed between them. The Scheme Company was not party to the discussions: by reference to and in reliance on Dr Ziegler's evidence, Mr Al-Attar confirmed, and I accept, that it countersigned the side letter only because the finance documents required its consent, and it neither offered nor could have offered the Allianz share to other lenders, the commitment being Allianz's to transfer to a lender willing to fund it at short notice.

76. No new right was created by the Scheme Company or conferred by the Scheme, the rights the Scheme gives to every Scheme Creditor are unchanged, the elevation involved is c. €5,540,000 of Existing Term Loans, c. 2.9% of the principal amount of the Scheme Liabilities, and no Interim Facility Lender has complained.

77. I accept the submission that an arrangement of that kind, made '*behind the curtain*' as between creditors rather than between the relevant scheme company and a creditor, does not in the ordinary course, where the scheme company's participation is nominal, affect the constitution of the class or the fairness of the Scheme: and see *Re Apcoa Parking Holdings GmbH* [2014] EWHC 3849 (Ch) at [90]-[93]. It does not disturb my conclusion that the class was fairly represented and the majority acted bona fide in its interests.

Rationality

78. I consider the voting results and the near-unanimous approval of the Scheme offer also a litmus test of rationality.

79. The approach of the Court was well described in the Scheme Company's skeleton argument. The Court asks whether the Scheme is one that an intelligent and honest man, a member of the class and acting in respect of his interest, might reasonably approve, not whether it is the fairest or best scheme or the one the Court would have devised: *KCA Deutag UK Finance plc* [2020] EWHC 2977 (Ch) at [28]-[29]; *Telewest (No 2)* at [21]-[22]. Where the vote is representative and the creditors properly informed, the creditors are much the better judges of their own commercial interests than the Court: *KCA Deutag* at [29]; *Re English, Scottish and Australian Chartered Bank* [1893] 3 Ch 385 at page 409. A high level of support raises a presumption that the scheme is rational: *Standard Profil* at [12] in the judgment of Meade J at the sanction stage.

80. I accept Mr Al-Attar's submission that the numbers support the presumption. For a non-participating Scheme Creditor the mid-case recovery under the Scheme is 13.9% against 10.7% in the Insolvency Scenario, and the high case 19.7% against 14.8%; the indicative update to 30 September 2026 narrows the margin by about a point and does not reverse it. The Scheme delivers deleveraging of c. €74,000,000 and new money the Group cannot obtain elsewhere, and the new money was open to all Eligible Scheme Creditors: see [36]-[37] of the Convening Judgment. I confirm the view expressed in the Convening Judgment at paragraph [48] that approval '*would not be illogical in those circumstances*'; creditors holding four-fifths of the debt have now approved.

81. At the hearing, I discussed with Mr Al-Attar whether it was relevant that the Insolvency Scenario high case exceeds the Scheme low case; and what in the ranges suggested should be taken to be the comparator. His response was that the comparison between the Insolvency Scenario high case and the Scheme low case can, in effect, be disregarded; as he put it in his skeleton argument, it *"is not to the point, the mid-case being the right comparison"*, and he relied on *Standard Profil* at [43] (at the convening stage) and [2025] EWHC 2313 (Ch) at [7] (at the sanction stage).

82. I would myself be wary of an invariable or even usual presumption, without more, that the mid-case is necessarily the right comparator in the context of a Part 26 Scheme (where the 'comparator', though well-established in the authorities as a parameter, is not a statutory test, in contrast to the test of *'no worse-off'* than the Relevant Alternative which is part of the architecture of Part 26A). I would prefer to consider the matter in the round to answer the basic question, and, if satisfied that the Scheme Creditors have been properly notified and informed as to the decision required, and that their votes at an appropriately constituted class meeting are not vitiated by an inappropriate factor, to follow that lead, unless there are good grounds for supposing that the Scheme low case and/or the Insolvency Scenario high case may in fact be more likely than the vote appears to imply.

83. In that context, and although Mr Al-Attar correctly cautioned that it cannot be admitted as an expert report because it is not compliant with CPR Part 35, MeSoFa has exhibited to its Written Submissions for the Convening Hearing a calculation by BDO which concludes that the Scheme exceeds the insolvency comparator for MeSoFa '*only by a narrow margin falling within the sensitivity range of the calculation*'. However, as Mr Al-Attar pointed out, even on its own terms, that is a conclusion that the Scheme is better for MeSoFa than an insolvency, even if only narrowly.

84. I have concluded that neither that assessment, nor the comparison between the Insolvency Scenario high case and the Scheme low case, provides any sufficient reason to take a different view from that expressed by the Scheme Creditors.

Overall fairness

85. It is always necessary for the Court, having addressed the usual tests, to stand back and consider whether nevertheless there are any aspects of the scheme proposed that are unfair from the point of view of any stakeholder affected. I consider three matters below: (a) the better outcome for new money participants; (b) the QR Structure and other features; and (c) any particular unfairness to dissentients, and in particular, MeSoFa.

Better outcome for new money participants

86. At paragraph [48] of the Convening Judgment, I specifically reserved to this hearing consideration of whether it is unfair that there would be a materially better outcome for new money participants. This is of particular relevance in that MeSoFa, being in liquidation, had no ability to participate.

87. I accept the submission that the authorities make clear that this is not unfair where every creditor in the class can subscribe to the new money *pro rata* to its debt, everybody gets equal treatment, and those who take up the option are entitled to the return it carries: and see, for example, *Standard Profil* at [14] in the judgment of Meade J at the sanction stage, applying *Re ED&F Man Treasury Management plc* [2020] EWHC 2290 (Ch) at [14]; and also *OQ Chemicals* at [47]; *Re Fossil (UK) Global Services Ltd* [2025] EWHC 2741 (Ch) at [97]-[102]. The elevation ratio of 1.45x and the Backstop Fees of 4.00% were found at convening to be within the range of comparable transactions: [23], [27], [80]-[81] of the Convening Judgment.

88. Two further features may be noted. First, the Super Senior Facility Final Commitment Date was set after the meeting, so that every Eligible Scheme Creditor could vote knowing the terms before deciding whether to lend (and see [22] and [78(4)] of the Convening Judgment). Secondly, and importantly, the fact that MeSoFa was never in a position to participate is not unfairness in consequence of the Scheme but the inevitable consequence of its liquidation. I am satisfied that there is no suggestion, nor is there any sign, that the Scheme has been promoted to take advantage of MeSoFa's position.

The QR Structure and other features

89. The QR Structure is the price of dispensing with a StaRUG. It affects every Scheme Creditor in the same way and proportions; conversion, if it ever occurs, takes the Restated Term Facility before the elevation loans because the Restated Term Facility already ranks behind them, and the restriction on payments to PIK lenders and CVR Beneficiaries likewise follows the agreed ranking.

90. A creditor in MeSoFa's position would bear conversion before an elevated creditor, but that is the purpose and effect of debt ranking, and it is the position MeSoFa would have been in without the QR Structure had the Potential Tax Liabilities crystallised and the Group failed.

91. The QR Structure improves that position by keeping the Restructuring Opinion, and so the Restructuring, available.

92. I confirm that, in my view, the other features drawn to the Court's attention at convening raise no fairness issue, for the reasons the Court gave in holding that they raise no class issue. In particular, in my judgment,

    (1) the Scheme Company's payment of the Steering Committee's adviser fees, which defrays expense actually incurred and confers no bounty, is unobjectionable (*Re Lecta Paper UK Ltd* [2019] EWHC 3615 (Ch) at [18] (at the convening stage) and [2020] EWHC 382 (Ch) (at the sanction stage); and *In the Matter of Codere Finance 2 (UK) Limited* [2020] EWHC 2683 (Ch) at [17]-[19]);

    (2) so too is the provision for the Investor Director rights, given that the rights attach to positions in the capital structure, not to persons (*Re Hibu Group Ltd* [2016] EWHC 1921 (Ch) at [56]; *Re New Look Financing plc* [2021] 2 BCLC 776 at [40]); and

    (3) the UniCredit Exchange is a bespoke term outside the Scheme, for a commercial service as Fronting Bank and for UniCredit's longer standstill on the UC EDEKA Guarantee, of €2,000,000 against total debt of €241,000,000, disclosed in the Explanatory Statement and not pressed by MeSoFa as a ground for refusal.

Fairness to MeSoFa and other dissentients

93. The Convening Judgment (see paragraphs [102(6)] and [111]) also specifically reserved to this hearing the fairness of MeSoFa's treatment, and in particular the provision in the Scheme for the payment of its entitlements into the Holding Period Trust rather than to it directly.

94. Mr Al-Attar identified five matters for consideration, as follows:

Application of UK Sanctions

95. MeSoFa's case at [15]-[26] of the Written Submissions was that it is not controlled by Mr Barchugov within regulation 7. The Scheme Company disputed this. But in the event, OFSI agreed with MeSoFa. On 2 July 2026 it said so, revoked the interest-payment licence and closed the Facility Agent's application. The determination by the Court of MeSoFa's status, which at the Convening Hearing its Counsel submitted should be heard before this hearing and which I refused for the reasons set out in paragraphs [101] to [110] of the Convening Judgment, is now moot. The Scheme Company accepted OFSI's conclusion the day it was made, treated MeSoFa as free of the UK asset freeze and admitted it to the vote. MeSoFa may consider that the Scheme Company's earlier caution cost it; but in the Convening Judgment (in paragraph [110]) I indicated my view that the Scheme Company's caution was '*understandable*' and, at first blush, '*justified*'. I note that Joanna Smith J adopted a similar approach (at the convening stage) in *Re SGB-SMIT GmbH* [2023] EWHC 1067 (Ch) at [51]. I note also that OFSI itself had licensed the interest payments, which is why a licence fell to be revoked, and MeSoFa's own solicitors described a designated person acting as liquidator as '*at the very least highly unusual*'. In my view, MeSoFa otherwise suffered

no prejudice: the meeting at which it could not have voted was never held, and it voted at the one that was.

The OFAC Licence Condition

96. Mr Al-Attar emphasised that MeSoFa's entitlements go into the Holding Period Trust for one reason: the Amended OFAC Licence requires it. Dr Ziegler has elaborated that the Scheme Company applied for a Full Participation Licence, which would have allowed MeSoFa to receive its entitlements directly, and in the alternative for a licence on Holding Period Trust terms; but OFAC would not accept the first and instead granted the alternative with the Blocking Condition which, following further discussions between the Scheme Company's advisers and OFAC, it replaced with the OFAC Licence Condition: MeSoFa's property is held on trust by a named trustee, i2 Capital Markets, until MeSoFa is de-listed or OFAC authorises the transfer. That is the licence under which the Restructuring will be implemented, and the Scheme Company cannot implement it on terms its licence does not permit.

97. Dr Ziegler has exhibited substantial correspondence between the Scheme Company and MeSoFa (and their respective legal advisers) from which it appears (and Dr Ziegler has explained) that MeSoFa's answer, first advanced on 26 and 31 August 2026 and repeated on 14 September 2026, is that its own OFAC licence (No. MUL-2022-900756-9), which authorises transactions incident to its wind-down, already permits it to receive all benefits under the SFA, so that the trust has '*no legal basis*'.

98. The Scheme Company's case has been and remains that MeSoFa misunderstands the position, because a licence held by MeSoFa authorises MeSoFa but it does not authorise the Scheme Company, the Obligors (which includes US entities), the Agents, the Holding Period Trustee or the new lenders to deal with MeSoFa's property in the Restructuring. Those parties act under the Scheme Company's licence, which says what it says, and appears to make clear that OFAC considers that such a licence is required.

99. Whether OFAC would authorise a direct transfer on an application by MeSoFa is a question for OFAC and MeSoFa, and the Scheme provides for exactly that: as the Scheme Company's solicitors have also explained in letters to MeSoFa's advisers, the Amended Holding Period Trust Deed provides that if MeSoFa obtains a Beneficiary Transfer Sanctions Authorisation, the trustee transfers its property to it, and if it is an Eligible Transferee on the Restructuring Effective Date it receives its entitlements directly like every other creditor. In other words, as the Scheme Company's skeleton argument puts it, *"the route out of the trust is in MeSoFa's hands."*

Is the Holding Period Trust contrary to Dicey, Morris & Collins, 16th ed, Rule 20?

100. Mr Al-Attar alerted me to the question whether the rule against the English Court exercising jurisdiction to enforce (either directly or indirectly) a penal, revenue or other public law of a foreign State (as set out in the "exclusionary rule" in *Dicey, Morris & Collins*, 16th ed, Rule 20 at 8R-001) might arguably preclude sanction of the Scheme with the provision for a Holding Period Trust. The argument would be that the purpose of such a trust is to enforce US sanctions.

101. He submitted that it is not: the Court is not asked to enforce US sanctions, directly or indirectly; no foreign state or its nominee seeks any relief, and the exclusionary rule is not engaged. Rather, he submitted, the Court is asked to sanction a scheme whose terms, approved by the majority, take account of a foreign law which in practice binds certain of the Scheme Company's Obligors and counterparties, as English courts routinely take account of foreign law as a fact bearing on what can lawfully or practically be done, without giving it effect as law: *Banque Indosuez SA v Ferromet Resources Inc* [1993] BCLC 112 at 115, 117. I provisionally accepted this in directing at the Convening Hearing (see paragraph [93] of the Convening Judgment) that the meeting would await the OFAC Licence.

102. My further reading for the purpose of determining whether to sanction the Scheme caused me to consider further whether there were any cases dealing in more detail with this question in the particular context of US (OFAC) sanctions. The cases cited to me originally had focused on United Kingdom sanctions (or, more accurately, European sanctions adopted as UK law post-Brexit). At my request, Mr Al-Attar provided a further post-hearing Note identifying the schemes of arrangement and restructuring plans in which a holding period trust has been used to hold scheme consideration for creditors who are sanctioned or who are prevented by sanctions from receiving it where the sanctions engaged were United States (OFAC) sanctions rather than, or in addition to, United Kingdom sanctions.

103. Mr Al-Attar identified four English cases: *Re Nostrum Oil & Gas plc* [2022] EWHC 1646 (Ch) at [40]-[43] (*per* Meade J at the convening stage) and [2022] EWHC 2249 (Ch) (*per* Mellor J at the sanction stage), *Re Praesidiad Ltd* [2024] 1 BCLC 506 at [31]-[34], *Re Mega Newco Limited* [2024] EWHC 3323 (Ch) (convening), and [2025] EWHC 479 (Ch) (sanction) and *VTB Capital plc (in administration)* [2024] EWHC 1777 (Ch) (at the convening stage *per* Sir Anthony Mann, sitting in retirement as a High Court Judge). However, neither *Re Praesidiad Ltd* nor *Re Mega Newco Limited* contained any further analysis of the particular issue; and, although Mellor J accepted (at the sanction stage) that such a trust *"does not place the Sanctions Disqualified Persons at any greater disadvantage than the constraints they already face under the sanctions legislation"* and that accordingly the trust structure was *"a fair and proper way to deal with the situation of the Sanctions Disqualified Persons"* (see [37] of the judgment), there is no discussion of the possible application of the exclusionary rule. Apart from a statement, without any suggestion of disapproval or doubt as to its efficacy, that the trust structure was *"intended to overcome certain difficulties that have arisen as a result of the sanctions regime and related difficulties",* the issue was not further considered in *VTB Capital plc (in administration)*, which did not proceed to the sanction stage (since a majority creditor did not approve the scheme).

104. Thus, as I had rather anticipated, Mr Al-Attar's further researches have not revealed any English authority which, on closer analysis, substantively addresses the particular issue, although there are many instances of sanctioned schemes containing a holding period trust intended to address (amongst other difficulties) the constraints of sanctions regimes.

105. This could, I suppose, suggest that the issue has been considered to be beyond sensible argument; and the assumption and momentum of the cases is clear. However, the inter-relationship between the sanctions regimes and trusts or other methods of deferred or indirect payment has increasingly been revealed to be a notoriously difficult area; and

given that (a) the issue has entirely properly been raised in submissions, (b) the exclusionary rule goes to the Court's jurisdiction, (c) MeSoFa has questioned the propriety and validity of the Amended Holding Period Trust, and (d) a German or other foreign court which is invited to enforce the Scheme in its jurisdiction may well wish to have explained to it this Court's approach to the issue, I have considered it with additional care and from first principles.

106. In my view, the essential question is whether the Amended Holding Period Trust is to be characterised as targeted as a means of enforcing US sanctions law, or whether it is to be characterised as a structure of a fairly standard type which in the particular circumstances also expressly recognises the fact of US/OFAC sanctions and provides an alternative means for enabling the Scheme Company to satisfy its obligation to effect payment consistently with its licence and in a manner which leaves it to MeSoFa (as the creditor potentially exposed) to obtain a Beneficiary Transfer Sanctions Authorisation so as not to be in breach.

107. As is expressly recognised in *Dicey, Morris & Collins*, 16th ed, Rule 20 at 8R-004, *"…it is sometimes difficult to draw the line between an issue involving merely recognition of a foreign law and indirect enforcement of it."* However, in my judgment, the proper characterisation of the Amended Holding Period Trust is that it is a mechanic which is habitually included in schemes to address the difficulty that some creditors may be under some restriction which precludes them from receiving monies due to them immediately and which provides for the monies to be held in trust pending removal of the restriction. The fact that in this case the particular restriction of concern relates to US/OFAC sanctions does not alter its character. Further, the particular provisions introduced to address the restrictions imposed by OFAC sanctions have been developed not to enforce but to recognise OFAC sanctions. It is a structure to provide both the Scheme Company and MeSoFa with the means of safely complying and enforcing (respectively) the payment obligations imposed by or pursuant to the Scheme.

108. Thus, I have concluded that I should accept Mr Al-Attar's submissions on this issue. I confirm my view that the Amended Holding Period Trust (and its related arrangements) is not objectionable or unfair; nor is it properly regarded as an indirect enforcement of US sanctions: and that accordingly, the exclusionary rule in *Dicey, Morris & Collins*, 16th ed, Rule 20 at 8R-001 is not engaged. I reach that conclusion not because of, but with relief in view of, the fact that it appears to be the mechanism by which every recent scheme involving a US-sanctioned creditor has reconciled the creditor's entitlement with the licence under which the Scheme Company acts; and it is difficult to see how else the issue could safely be resolved in practice.

Terms of the trust

109. MeSoFa's remaining complaint is that the Holding Period Trust may last indefinitely and that after three years its property may be transferred to a Sanctions Alternative Transferee. Neither is unfair to it. MeSoFa receives the same entitlements as every other Scheme Creditor, calculated in the same way and issued on the same day; the trust goes to how they are held, not to the rights themselves: paragraph [85] of the Convening Judgment. Its beneficial interest vests on the constitution of the Holding Period Trust, a fixed trust of vested interests, so that duration is a matter of administration and no question of remoteness of vesting arises.

110. The duration of the Holding Period Trust tracks the OFAC Licence Condition, no more: as previously explained in paragraph [22] above, for a beneficiary that ceases to be sanctioned or obtains a Beneficiary Transfer Sanctions Authorisation the period runs (i) for the longer of 24 months from the Restructuring Effective Date and six months from that cessation; (ii) if it obtains an authorisation permitting transfer of its Trust Property to it (a "Beneficiary Transfer Sanctions Authorisation"), for the longer of 24 months and the date of that transfer; and (iii) otherwise indefinitely for so long as MeSoFa remains a Sanctions Disqualified Person without such an authorisation, which is the period during which, trust or no trust, its property could not lawfully be delivered to it. The Holding Period Trust therefore leaves MeSoFa no worse off than US sanctions law already does, the premise on which MeSoFa itself accepted at convening that it would suffer '*no expropriation or any identified monetary harm*' unless the sanctions issue were unresolved within the trust period: and see paragraph [102(7)] of the Convening Judgment. The period has since been lengthened in MeSoFa's favour, so that its property is not lost by the passage of time.

111. The alternative-transferee mechanism operates only with a separate OFAC authorisation, and then only if MeSoFa has by then neither been de-listed nor obtained its own authorisation, and only on terms that the consideration remains on trust; it is a realisation power of the kind approved in *Nostrum* and *Praesidiad*, not a forfeiture, and exists so that the trust need not hold illiquid instruments for ever. The alternative was worse: the Blocking Condition would have required MeSoFa's property to be placed in a blocked account at a US institution, outside the Scheme, this Court's supervision and MeSoFa's reach.

112. The exhibited correspondence between the solicitors acting for the Scheme Company and MeSoFa respectively has satisfied me that the Scheme Company has taken account of MeSoFa's comments on the deed where it could and explained where it could not. MeSoFa's request that the trust be '*abolished*' is not one the Court could grant: although it could indicate its preference, which might be persuasive, it has no unilateral power to rewrite the Scheme's terms (and see *per* Sir Alastair Norris (sitting as a High Court Judge, at the sanction stage) in *SGB-SMIT GmbH* [2023] EWHC 2551 (Ch) at [25]), and a Scheme without the trust could not be implemented under the Amended OFAC Licence at all.

Other matters MeSoFa has reserved for further decision now

113. MeSoFa has noted (in its Written Submissions, at paragraphs [30]-[31]), but without pressing them as being of real materiality to its views of the Scheme, the UniCredit Exchange and the adviser costs, a German capital maintenance point (at paragraph [32], which is further explained in paragraph [116] below in this Judgment) and '*continuing*' inequality of information (at paragraph [33]).

114. As to the last, I recorded at paragraphs [102(5)] and [110] of the Convening Judgment that MeSoFa had conceded that it had not been denied any material documentation; and MeSoFa does not renew its complaint: see paragraph [11(b)] of its Written Submissions. For completeness, the evidence is that the one gap found since, the 35 early documents, was corrected and disclosed on 14 May 2026; every document distributed since the Convening Hearing has gone to MeSoFa by email at or within minutes of its posting to other creditors; and MeSoFa's assertion on 31 August 2026 that it had received no details of the Holding Period Trust Deed was wrong, the draft

having been provided before the Convening Hearing, on 8 May 2026 and on 11 September 2026. The two instances MeSoFa gives, a financial report received a week after other lenders and the absence of data-room access, do not bear on its ability to assess the Scheme: it has had the Explanatory Statement, the Comparator Report, the IDW S6 Opinion, the IBR, every Restructuring Document and every redline, has taken BDO's advice on them, and voted. The Facility Agent's inability to deal directly with a US-designated person is a consequence of MeSoFa's designation, not of any decision of the Scheme Company.

No "blot"

115. Part of the function of the Court at the Sanction Hearing is to consider whether there is any *"blot on the scheme"*. This somewhat quaint term connotes an illegality or material mistake in the scheme, or a technical or legal defect such that it does not work according to its own terms or infringes some mandatory provision of law or for some reason makes the scheme inoperable: *Re Van Gansewinkel Groep BV* [2016] 2 BCLC 138 at [61]; *Re Co-operative Bank plc* [2017] EWHC 2269 (Ch) at [22]; *Re Instant Cash Loans Ltd* [2019] EWHC 2795 (Ch) at [2].

116. I can see no such blot. Again for completeness, MeSoFa indicated at the Convening Hearing it would wish to reserve, without evidence and without pressing it, a contention that the Scheme Company's funding of the New Lion entities may be an unlawful return of capital under German law: see MeSoFa's Written Submissions, at paragraph [32]. The New Lion entities are newly incorporated Luxembourg companies which become the Scheme Company's indirect shareholders only on the Restructuring Effective Date; the cost of establishing the new holding structure is a cost of implementing the Restructuring, incurred for the benefit of creditors, of the same character as the cost of the Scheme itself, and not a distribution to a shareholder. In any event, how the Scheme Company funds its transaction costs is not a term of the compromise and could not be a defect in it. The releases in the Deed of Release, as narrowed, are of the kind routinely given effect through the authority a scheme confers; the additional power of attorney is an implementation safeguard; and in paragraph [62] of the Convening Judgment I accepted in principle the effectiveness of the Contribution Deed Poll, which grounds the Scheme's effect on rights against OpCo, and see no reason to doubt that now.

Likely effectiveness here and abroad

Conditions and timing

117. Section 899(4) CA 2006 stipulates that, if sanctioned, the Scheme becomes effective on delivery of the sanction order to the Registrar; and clauses 3.1 and 3.3 of the Amended Scheme Document reflect this. However, and as also explained in paragraph [7] of the Convening Judgment, the Scheme is part of and enables a more general restructuring of the Group. The mechanics for implementation of the Restructuring ("the Implementation Steps"), and the Restructuring Conditions" (see paragraph [13] above) to which it is subject, can be summarised as follows.

118. On taking effect, the Scheme provides that, amongst other things, each Scheme Creditor authorises the Scheme Company to enter into the Restructuring on satisfaction or waiver of the Restructuring Conditions, whereupon the Restructuring Documents are released from escrow and the Implementation Steps taken.

119. The status of each Restructuring Condition is carefully tabulated in Dr Ziegler's second witness statement. The conditions relating to the Sanctions Licences, the Deeds of Undertaking and know-your-customer checks are satisfied. The corporate authorisations, security documents, legal opinions and execution versions of the Restructuring Documents are in agreed form or in progress and are expected to be satisfied by 23 October 2026. The Final Restructuring Opinion is to be delivered shortly after the Scheme Effective Date, the QR Undertaking having resolved the leverage issue. The Scheme Company expects the Restructuring Commencement Date to occur on or around 30 October 2026 and the Restructuring Effective Date before 31 October 2026, all conditions having been satisfied or waived by 23 October 2026 to allow the five Business Days the Restructuring Implementation Deed requires. The Long-Stop Date under the Lock-Up Agreement is 31 December 2026 or such later date as may be agreed between the Scheme Company and the Scheme Creditors constituting the majority at the Scheme Meeting (except that any extension beyond 31 March 2027 would require the prior written consent of the Scheme Company and each Scheme Creditor).

120. As part of determining whether to exercise its discretion, the Court is always bound to scrutinise any conditionality to the effectiveness and implementation of a scheme for which its sanction is sought. There are two principal and related considerations. One is that the Court must know what the effect of the Scheme is truly intended to be, and it must in that context be satisfied that no party has, in effect, a power unilaterally to change its effect or implementation so that the Scheme operates in a way which is different from that the Court has envisaged. The second is that the Court is astute not to act in vain. The Court may refuse sanction if not persuaded on both points. In this case, the Restructuring Conditions are various, and some remain outstanding; so they do invite review, notwithstanding the care with which they have been explained.

121. Nevertheless, Mr Al-Attar submits that the Court may sanction a scheme despite an outstanding condition which there is no reason to suppose will not be satisfied, citing *Re Smile Telecoms Holdings Ltd* [2021] EWHC 685 (Ch) at [41]-[46]. He submits that none of the outstanding Restructuring Conditions is a reason to withhold sanction. He points out that the conditions that I mentioned in paragraph [114] of the Convening Judgment as calling for comment, that is to say, the Sanctions Licences and the StaRUG, are respectively satisfied and gone; he characterises those that remain as being the ordinary mechanics of closing, and emphasises that there is no reason to suppose that any will not be satisfied.

122. I have consistently been concerned about complex conditionality where some conditions remain outstanding. However, in this case, and having reviewed, in addition to *Re Smile Telecoms* itself, the cases there analysed (namely, *Lombard Medical Technologies Plc* [2014] EWHC 2457 (Ch) (a members' scheme) and *Re Equitable Life Assurance Society* [2019] EWHC 3336 (Ch) (an application for the sanction of a scheme of arrangement between a life insurance company and its members), and *Re Nielsen Holdings Plc* [2015] EWHC 2966 (Ch), especially at [3]), as well as the detailed evidence provided by Dr Ziegler, I accept Mr Al-Attar's submission that there is no sufficient reason to withhold sanction by reference to the conditionality explained. I accept that the Court does not require certainty that a condition will be satisfied (and see *Re Smile Telecom* at [53]); the degree of assurance the Court requires will depend

on the circumstances; and, in this case, there is no reason to suppose that any of the outstanding conditions will not be satisfied.

Sufficient connection and international effectiveness

123. I have explained in paragraphs [117]-[118] of the Convening Judgment why I considered that that there is a sufficient connection with England to warrant the exercise of jurisdiction notwithstanding the foreign elements. In a nutshell: the SFA and the Intercreditor Agreement are governed by English law and confer exclusive jurisdiction on the English courts, and the Scheme Liabilities can only be discharged, absent the Scheme, as a matter of English law: *Re OJSC International Bank of Azerbaijan* [2019] BCC 452; *Re Light SA* [2024] EWHC 2733 (Ch) at [37]-[39]. Nothing has changed and I confirm my earlier conclusion.

124. Again by reference to the principle that the Court will be careful not to act in vain, the Court need not be certain that the Scheme will be given effect in every relevant jurisdiction; but credible evidence is required of a reasonable prospect that the Scheme will be recognised and given effect where it matters: *Re DTEK Energy BV* [2022] 1 BCLC 260 at [27] (Sir Alastair Norris); *Re Hong Kong Airlines Ltd* [2023] BCC 477 at [51].

125. In this case, Germany, the place of incorporation and COMI of the Scheme Company and the other Obligors, is the jurisdiction that matters; and the English Court is required to adopt the viewpoint of a German Court in assessing the likelihood of recognition and enforcement in its jurisdiction. In that regard, I have been provided with the very considerable assistance of a comprehensive and persuasive expert report by Professor Dr. Christoph Thole ("Prof. Thole"), a full professor of law at the University of Cologne, for which I gave permission pursuant to CPR 35 at the Convening Hearing.

126. Prof. Thole has concluded that it is highly likely that the sanction order will be recognised in Germany, under Article 5 of the Hague Judgments Convention of 2 July 2019 (in force between the United Kingdom and Germany since 1 July 2025) or under section 328 of the German Code of Civil Procedure (ZPO); that the Scheme Company and the German Obligors will be able to rely on the sanction order in any German proceedings challenging the amendments to the SFA or the documents executed under the authority the Scheme confers; and that none of the grounds for refusing recognition is likely to apply.

127. I note by way of further comfort that this is also the evidence accepted in *Standard Profil* [2025] EWHC 2313 (Ch)at [16]-[19], where (at the sanction stage) Meade J held, notwithstanding the Frankfurt court's preliminary refusal to recognise a Part 26A plan, that the Hague conventions and section 328 ZPO provide routes to recognition of a Part 26 scheme which that decision does not touch. Further, it is consistent with the evidence provided and the conclusion reached in *Re Safari Holding Verwaltungs GmbH* [2022] EWHC 1156 (Ch) at [10] and *Re AGPS Bondco plc* [2023] EWHC 916 (Ch) at [331]-[332]. In the Convening Judgment I proceeded (at paragraphs [119]-[121]) on the footing of at least a reasonable prospect of recognition in Germany. The evidence now before me goes further. I have concluded that the Court will not be acting in vain.

An issue as to the Undertakings by non-Scheme parties offered by Deed Poll

128. Various non-Scheme companies, many of which are foreign entities, have undertaken by Deed Poll governed by English law to be bound by the Scheme and (put shortly) to comply with its terms and conditions and to procure to be done anything which the Scheme Company considers reasonably necessary or desirable for the purpose of giving effect to the terms of the Scheme and the implementation of the Restructuring. The undertaking is expressed to be *"in favour"* of the Scheme Company, the Scheme Creditors and the Court, together defined as "the Beneficiaries".

129. Although Mr Al-Attar confirmed to me that this was not an unusual means of binding in non-Scheme parties, and has established that the process was in fact adopted in at least two schemes or plans which I have previously sanctioned, I felt some unease about it, absent any express undertaking to the Court and confirmation that the giver of the undertaking had been made fully aware of its consequences (including punishment by the Court, of its own motion, for breach).

130. In further reading, I have also noted some technical uncertainties, such as the fact that although the undertakings given under clause 3(b) of each Deed Poll expressly state that the undertaking is to "the Beneficiaries", the undertaking in clause 3(a) is not in those terms.

131. Mr Al-Attar acknowledged that he was not aware of any scheme or plan authority which addressed the point. Characteristically helpfully, he indicated that he would research the matter further and provide a post-hearing Note. He has duly done so and it has been very helpful.

132. His post-hearing Note has cited authority to confirm that:

(1) A scheme or plan binds only the parties to it. Some mechanic is necessary to bind in non-parties. An undertaking is an obvious mechanic.

(2) There is no rule of law or practice which disallows the offer of an undertaking to the Court in the form of a deed poll, nor its acceptance by the Court.

(3) There are a number of decisions in which the Court has accepted a written undertaking signed by the giver and addressed to the Court, though the giver has usually in those instances been a party to the proceedings before the Court.

(4) It must be clear that the undertaking is addressed and given to the Court, even if it is also made for the benefit and in favour of others.

(5) An undertaking in such a form will bind the parties contractually but the Court may nevertheless decline to accept the undertaking, for example if it considers it imprecise or uncertain or contrary to law or public policy.

(6) If the Court does accept the undertaking, it has the same force as if given by Counsel or personally, provided it is clear and unambiguous, the Court can be confident it has sufficiently been explained, and the giver has submitted to its jurisdiction.

(7) Any undertaking given to the Court may be varied or released by the Court. What the effect is on the contract between the parties is less clear.

133. My residual concerns have centred around the following:

(1) It is my invariable experience in the context of "transfer schemes" to facilitate a take-over (of which I have seen very many) that the undertaking to be bound is given by the acquirer (which technically is not a scheme party) through Counsel for the Scheme Company as the acquirer's Counsel for that (limited) purpose. It is not simply recorded: it is offered, and the Court may (if it wishes) interrogate whether the giver of the undertaking has submitted to the jurisdiction and fully understands the effect. I assume that the usual (I consider, invariable) formulation serves a useful purpose.

(2) I have some concern, given the emphasis in the authorities on the need for no ambiguity or uncertainty, about the undertaking being expressed to be *"in favour"* of (amongst others) the Court, but not given to the Court: and that concern is not quelled by the difference in language between clauses 3(a) and 3(b) of the Deed Poll.

(3) I would wish in any event some formal confirmation, especially as the processes of the English Court may not be entirely familiar to overseas entities, that the consequences of giving an undertaking to the English Court have been properly explained.

(4) I still consider that the clearest way of dealing with all these concerns is for the undertaking to be given through Counsel for the Scheme Company as the undertaking giver's Counsel for that purpose, and for express confirmation of full explanation of the consequences to be given and recorded.

(5) I do not say that the undertaking would otherwise be flawed nor that, if my preference cannot sensibly be accommodated, I would decline to accept what is offered. But my preference is clear.

(6) In the future, I would suggest that it may well be thought wise to include in a Deed Poll clearer language to show without ambiguity that the undertaking is given to the Court, and further language (a) recording the fact that its consequences have been explained and (b) expressly authorising Counsel for the scheme company to give the undertaking to the Court in the form set out in the Deed Poll on the undertaking party's behalf.

134. In the event, and having expressed my remaining concerns in correspondence with the Scheme Company's Counsel, I have been informed that in fact each Undertaking Party has confirmed to the Scheme Company that (a) Mr Al-Attar has now been authorised, acting as its Counsel for that limited purpose, to confirm its undertaking to the Court, and (b) the consequences of giving an undertaking to the English Court, including its enforcement by the Court itself for contempt of court in the event of default, have been explained, understood and accepted by the Undertaking Party concerned. That, of course, addresses my concerns; and I have nevertheless included an explanation of them in case of assistance in other cases.

Costs

135. As noted in paragraph [82] of the Convening Judgment, the Scheme Company has agreed to pay the reasonable fees of the advisers to the Steering Committee and the Relevant Lenders, who negotiated the Restructuring. I confirm my previously stated view that I see no objection to this in the circumstances: and see *Lecta Paper* and *Codere*.

136. However, the Scheme Company has declined MeSoFa's demand of 14 September 2026 (a) that it be indemnified in respect of its historical legal costs of €345,871, purportedly pursuant to clause 23.3 of the SFA, on the basis that its costs of separate advice, expert evidence and these proceedings are costs of *"enforcing or preserving a Finance Party's rights"*, and within that clause; (b) that clause 12.2(b) of the Amended Scheme Document be deleted so that these claims for indemnity survive implementation of the Scheme; and (c) that the Scheme Company should also enter into a 'hold harmless agreement' with it with respect to all future costs.

137. As to (a) in paragraph [136] above and MeSoFa's claim for an indemnity under the SFA, the Scheme Company's position (as explained in correspondence) is that MeSoFa's demand for past costs does not relate to the enforcement or preservation of its rights under the SFA and therefore does not fall within the scope of clause 23.3. Rather, it characterises those costs as relating to a dispute between MeSoFa and the Facility Agent about MeSoFa's own sanctions status as a matter of English and Austrian law, which is not a "right" under the SFA, nor is it the enforcement or preservation of any right under the SFA against the Scheme Company.

138. As to (b) in paragraph [136] above, the Scheme Company makes the point that, whatever its merits, MeSoFa's claim for an indemnity is a claim under a Finance Document of exactly the kind clause 12.2(b) releases for every Scheme Creditor as part of the compromise, and the Court has no freestanding power, at least without the concurrence of the Scheme Company as proponent of the Scheme, to impose modifications of a scheme approved by the Scheme Creditors; still less can the Court properly excise a clause for one creditor's benefit, especially given the clause's centrality in the Scheme as a whole: and see *per* Sir Alastair Norris (sitting as a High Court Judge) in *SGB-SMIT* (at the sanction hearing) at [25]. MeSoFa is treated as the others are. Moreover, at less than 0.2% of the value voting, the claim could not have affected the result on any view.

139. As to (c) in paragraph [136] above, and MeSoFa's claim to be held harmless for future costs, the Scheme Company's position (also as stated in its solicitors' correspondence with MeSoFa's solicitors) is that *"any matters in respect of the Scheme, including any claims in respect of costs in connection therewith, are properly addressed as part of the Scheme process"* and that it would not be "*customary"* to provide cost coverage for individual Scheme Creditors.

140. Costs in relation to the Scheme process are for the Court to determine in its discretion according to the particular circumstances. Although, in an appropriate case, the Court may make an order in favour of a creditor which has attended to assist the Court on an issue of general and proper concern which the Court must necessarily determine, such as class composition (see, for example, *Re Stronghold Insurance Company* [2018] EWHC 2909 (Ch) at [145] and *Re Ophir Energy plc* [2019] EWHC 1278 (Ch)), it would

be very rare, if ever at all, that the Court would order a company to fund the costs of a creditor in advance in respect of its opposition to a scheme or any part of it because of its alleged adverse effect on the particular creditor itself; and Mr Al-Attar submitted that the Court has never required it. Moreover, in this case, MeSoFa was told at convening that it pursued its points at its own risk as to costs (see the Convening Judgment at paragraph [111]), and its contribution has not been such as would entitle it to any part of them: cf. *Re Virgin Active Holdings Ltd* [2021] EWHC 911 (Ch) at [29]. Whether MeSoFa should bear any part of the Scheme Company's costs of its intervention is a matter for after sanction; the Scheme Company reserves its position.

141. I consider that the Scheme Company was entitled, and to my mind correct, to refuse MeSoFa's claims pursuant to the SFA. In my view:

(1) as to paragraph (a) in paragraph [136] above, MeSoFa's claim for an indemnity in respect of its costs is not within clause 23.3 of the SFA (which is governed by English law), but

(2) even if I am wrong about that, the Court has no power to modify the release clause 12.2(b) of the Scheme as approved, and even if it had, I would not consider it appropriate to exercise it.

Postscript: further written submissions on behalf of MeSoFa

142. However, in the course of finalising a circulation draft of this judgment, MeSoFa have sought an order for its costs in respect of the Scheme process as well as pursuant to the SFA.

143. On Friday 16 October 2026, I received a letter from the Scheme Company's solicitors enclosing copies of (a) a letter dated 9 October 2026 from MeSoFa ("MeSoFa's letter") addressed to the Scheme Company and to UniCredit as Agent and Security Agent, (b) a letter to MeSoFa from the Scheme Company's solicitors (Latham and Watkins) dated 16 September 2026 ("the 16 September Letter") and (c) the Scheme Company's letter dated 28 September 2026 ("the 28 September Letter") rejecting MeSoFa's Letter of Demand dated 18 September 2026 for an indemnity in respect of costs. MeSoFa's letter dated 9 October 2026 had apparently been received by the Scheme Company on 12 October 2026; and it concluded with a request that it be forwarded to the Court.

144. The Scheme Company's primary submission, as set out in Latham and Watkins's letter to the Court of 16 October 2026, was that the Court should disregard MeSoFa's letter as being an uninvited submission made after the conclusion of the Sanction Hearing without permission.

145. Latham and Watkins characterised MeSoFa's letter as *"…in substance, an attempt to make submissions on matters that were before the Court at the Sanctions Hearing, in circumstances where MeSoFa elected to attend the hearing remotely in an observational capacity only, and did not instruct counsel to make submissions on their behalf."* Latham and Watkins also emphasised that MeSoFa's election was a fully informed one, that after attending the Scheme Meeting and voting against the Scheme, MeSoFa had not given any notice of any intention to oppose sanction, nor to seek to be heard at the Sanction Hearing; on the contrary, on 2 October 2026, its solicitors (Gherson) confirmed by email to Latham and Watkins that MeSoFa's position was as

set out in its Written Submissions prepared by both Leading and Junior Counsel, and that it did not intend to appear or be represented at the Sanction Hearing, save to observe the proceedings via a link. Latham and Watkins drew to my attention, and in such circumstances relied on, *Re Stanford International Bank Ltd (in Receivership)* [2011] Ch 33 (CA) in which (at [197]) Hughes LJ (as he then was) deprecated the uninvited submission of written argument after the hearing had concluded as *"generally illegitimate"*.

146. If nevertheless the Court were to have regard to any part of MeSoFa's letter, Latham and Watkins contended on behalf of the Scheme Company that it should also be given the opportunity to file evidence and/or make further submissions in response, presumably to amplify the *"brief responses"* arguments in their letter *"solely to assist the Court"* in case I were minded to consider the matter further. Further evidence and submissions before judgment (or, at least, a decision whether to sanction) would inevitably lead to delay, and would be likely to prejudice the process beyond the end of the month, with the result that the planned Restructuring Effective Date of 31 October 2026 would be lost. (Indeed, to achieve that date, I have indicated that I would use every endeavour to ensure an answer by 23 October 2026. MeSoFa has been aware of these dates for some time.)

147. Although, of course, the disapproval of late uninvited post-hearing submissions is salutary and may often result in their rejection, it is always open to the Court to permit further submissions, even if uninvited, if it considers that the interests of justice favour that course. It is, as so often, a question of balancing the risk of injustice. With some considerable misgiving, but having regard to the fact that MeSoFa is the single largest lender under the SFA, is plainly aggrieved and has expressed concern about a level playing field, I have considered the points made in MeSoFa's eight-page letter. I have accordingly also considered Latham and Watkins's substantive written (five-page) response.

148. I do not think it necessary or appropriate to rehearse the competing arguments now advanced. After careful consideration, I have concluded as follows:

(1) It would not be in the interests of justice or consistent with the overriding objective to permit a course which would imperil the planned Restructuring Effective Date which has been known to all parties for some considerable time.

(2) The question becomes whether a round of further evidence and submissions on behalf of the Scheme Company (which MeSoFa has not anticipated but to which it would probably wish to reply) would be necessary.

(3) In my judgment, no further evidence or submissions are justified in respect of MeSoFa's claim to be indemnified under clause 23.3 of the SFA. I see no reason to re-open or review the conclusion expressed above (in paragraph [141]) that the Scheme Company was entitled to and, to my mind, correct, to refuse MeSoFa's claims pursuant to the SFA. I consider that aspect of the matter to be concluded.

(4) Any claim to recover costs otherwise than pursuant to clause 23.3 and (quoting from MeSoFa's 9 October 2026 letter) *"on all possible legal grounds"*, thereby presumably with a view to invoking the Court's general discretion as to costs in

any proceedings, can be determined after judgment, if necessary. As previously warned, MeSoFa would be proceeding at its own risk, including the risk of an adverse costs order. In its skeleton argument, the Scheme Company has already reserved for determination after sanction whether MeSoFa should bear any part of the Scheme Company's costs (although I understand it to accept that such an adverse costs order would be unusual: see *In the Matter of Virgin Active Holdings Ltd and Others* at [29(v)]).

(5) I shall not pre-judge the position as regards any claim for an award of costs by the Court in the exercise of its discretion, beyond noting that (a) insofar as MeSoFa may be suggesting that the Amended Holding Period Trust and related arrangements were exceptional or targeted against it, that is a misunderstanding of an entirely commonplace provision; and (b) I do not presently find compelling MeSoFa's central claim that it should be entitled to an order for costs on the basis that its interventions have contributed *"in a substantial manner to the Restructuring"* and so *"corrected a material error affecting the Restructuring as a whole."*

(6) If nevertheless either party wishes to proceed to an adjudication, they should take immediate steps so to inform the Court and make the required formal application.

Conclusion

149. In all these circumstances, and subject to the issue of undertakings being resolved, I have concluded that the Court can and should sanction the Scheme. In order to ensure that the notified Restructuring Effective Date can be maintained, this judgment will be delivered remotely via email not before 2.30pm on Friday, 23 October 2026.

150. The Order when made should, in addition to the usual terms, record the Court's approval of the revised Record Time, the admission of MeSoFa to vote as an SDP Voting Eligible Scheme Creditor, and (now that I understand that my preferred route is being adopted) the confirmation of the undertakings to the Court by the Scheme Company's Counsel, acting for this purpose only as Counsel for each of those giving the Undertaking after full explanation of its consequences.

151. Lastly, I record my thanks to Mr Al-Attar and his team for their considerable assistance and patience in taking me through a complex and detailed Scheme and the Restructuring of which it forms a part, and in responding so efficiently and effectively to my requests for post-hearing assistance on points which I have considered to be of some novelty and systemic significance.