Digitally signed by Advance Performance Exponents Inc.
Date: 2026.11.17 13:44:44 -05:00
Reason: Document Certification
Location: Court Document Management System

**Neutral Citation Number: [2026] CIGC (FSD) 100**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

**CAUSE NO: FSD 124 OF 2026 (NSJ)**

**IN THE MATTER OF SECTION 86 OF THE COMPANIES ACT (2026 REVISION) AND IN THE MATTER OF E-HOUSE (CHINA) ENTERPRISE HOLDINGS LIMITED**

---

# REASONS FOR GRANTING CONVENING ORDER AND SANCTION ORDER IN RELATION TO THE COMPANY'S SCHEME OF ARRANGEMENT

---

| | |
|---|---|
| **Appearances:** | **Mr Adam Al-Attar KC with Mr Nick Herrod and Mr Ryan Hallett of Maples and Calder (Cayman) LLP for the Company** |
| **Convening hearing:** | **3 July 2026** |
| **Sanction hearing:** | **9 October 2026** |
| **Draft judgment distributed:** | **10 November 2026** |
| **Judgment Delivered:** | **17 November 2026** |

**Introduction**

1. On 3 July 2026 I heard (the ***Convening Hearing***) the application made by E-House (China) Enterprise Holdings Limited (the ***Company***) for permission to convene a single meeting of its creditors (the ***Scheme Creditors***) to consider and, if thought fit, approve a scheme of arrangement (the ***Scheme***) under section 86 of the Companies Act (2026 Revision) (the ***Companies Act***). There was no opposition to the Company's application. I granted the application and an order was made on 9 July 2026 (the ***Convening Order***), inter alia, granting permission to convene a single meeting of the Scheme Creditors (the ***Scheme Meeting***) to be held at 8.30 a.m. Cayman time on 27 August 2026 and leave to amend the Petition.

2. On 9 October 2026 I heard (the ***Sanction Hearing***) the Company's application for an order sanctioning the Scheme. The Scheme had been approved at the Scheme Meeting of Scheme Creditors by 95.5% by number and 97.8% by value of the Scheme Creditors present and voting. I granted that application and on the same day made an order (the ***Sanction Order***) sanctioning the Scheme.

3. Mr Adam Al-Attar KC appeared for the Company at both the Convening Hearing and the Sanction Hearing. I found both his written and oral submissions to be detailed, thorough and very helpful.

4. I now set out my reasons for making the Convening Order and the Sanction Order.

**The scheme in outline and the relevant background**

5. The Scheme forms part of a restructuring (the ***Restructuring***) to be implemented through parallel and inter-conditional schemes of arrangement in this jurisdiction and in Hong Kong (the ***HK Scheme***, together, the ***Schemes***). The Restructuring is a full debt-for-equity swap. The Company's two series of New York-law notes (the ***Notes***) and its Hong Kong-law convertible note (the ***Convertible Note*** or ***CB***) will be released, cancelled and discharged in return for new ordinary shares in the Company, such that the Scheme Creditors will hold in aggregate approximately 65% of the enlarged issued

share capital (see the First Affirmation of Cheng Li-Lan affirmed on 17 June 2026 (***Cheng-1***) at [95]–[100]). The reasons for and the terms of the Restructuring are summarised in the Company's Practice Statement Letter dated 5 June 2026 (the ***Practice Statement Letter***). The HK Scheme was approved at the HK Scheme meeting on 27 August 2026 by the requisite majorities, and was sanctioned by the Court of First Instance in Hong Kong on 11 September 2026 (see the Second Affirmation of Cheng Li-Lan affirmed on 28 August 2026 (***Cheng-2***) at [25]).

6. The Company is a Cayman Islands exempted company whose shares are listed on the Main Board of the Stock Exchange of Hong Kong (the ***SEHK***) (stock code 02048). It is the holding company of a group of more than 190 companies (the ***Group***) carrying on real estate agency, data and consulting, brokerage network and digital marketing services in the People's Republic of China (the ***PRC***). The Company's evidence is that it is insolvent on both a cashflow and a balance-sheet basis (see Cheng-1, [26] -[27], [49] - [50]).

7. This is the third occasion on which the Company has sought to restructure substantially the same offshore indebtedness by a Cayman scheme. Two earlier schemes - sanctioned in November 2022 (the ***2022 Scheme***) and November 2023 (the ***2023 Scheme***) - could not be consummated, for the reasons set out in Cheng-1 at [60] - [84]. I was the assigned judge in both cases. My judgment dealing with the 2022 Scheme sets out much of the background (see *Re E-House (China) Enterprise Holdings Ltd*, FSD 165 of 2022 (NSJ), 17 November 2022 (***E-House 1***)).

**The Company and the Group's financial position and its deterioration since the earlier schemes**

8. The Company's evidence is that its and the Group's financial position has deteriorated continuously and materially over the period from the 2022 Scheme to date, and has worsened further since the 2023 Scheme lapsed, and that this deterioration is central to the comparator for the purposes and to the rationality of the Scheme.

9. The backdrop is the prolonged downturn in the PRC real estate sector since mid-2021. As the Group serves real estate developers and other industry participants, the

developers' own liquidity crises fed directly into the Group's revenue and its ability to collect receivables (see Cheng-1 at [46]–[51]). The downturn has not abated. Kroll records that the sector remained under pressure entering 2026, that annual property sales volumes in the PRC had roughly halved over the past four years, and that S&P Global Ratings expects primary real estate sales to fall a further 10%–14% in 2026 (see the Kroll Report at [3.4] - [3.5]).

10. Against this backdrop the Group's position has worsened on every metric including profitability, liquidity and solvency.

11. At the level of the Company itself, the position is acute. As at 31 December 2025 the Company had total assets with a net book value of approximately RMB 81 million (US$ 11.5 million) against total liabilities of approximately RMB 6.999 billion (US$ 995.7 million), the overwhelming majority being the Notes and the Convertible Note. The Company's only readily realisable assets are its cash and cash equivalents (approximately RMB 3.8 million). The great bulk of its value lies in its shareholdings in, and inter-company claims against, its subsidiaries, which cannot be realised except at a significant discount and only on a going-concern basis (see Cheng-1 at [19] -[24]). The Company says that as a result it is insolvent on both a balance-sheet and a cash-flow basis (Cheng-1, [25] - [27] and [49] - [50]).

12. The Company states that the significance of this deterioration in its financial position is twofold. First, it explains why the only feasible restructuring is now a full equitisation. The Group has no capacity to support, service or extend its offshore debt, so any proposal involving cash repayment, deferred amortisation or new coupon-bearing debt would be "*structurally unworkable*" (see the Kroll Report at [6.2]–[6.3] and Cheng-1 at [91]). The Company says that this is why the cash-and-equity structure of the 2023 Scheme is no longer available, and why the absence of a cash element in the present Scheme reflects necessity, not a diminution of what the Company could otherwise have offered. Secondly, the deterioration means that the value available to creditors on the alternative to the Scheme (a liquidation) is lower now than it was when Kroll last analysed it in 2023.

**The Scheme debts**

13. The debts compromised by the Scheme are the Notes and the Convertible Note (Cheng-1 at [29] - [42]).

14. The Notes comprise (a) the 2022 Notes (7.625% senior notes, outstanding principal US$298,200,000, matured 18 April 2022) and (b) the 2023 Notes (7.60% senior notes, outstanding principal US$300,000,000, matured 10 June 2023). Total outstanding principal is US$598,200,000. The Notes are governed by New York law and accrued and unpaid interest as at 30 June 2025 was US$165,196,341. There is no default interest under the Notes (Cheng-1 at [32]–[33]).

15. The Convertible Note is the HK$1,031,900,000 2.0% convertible note issued on 4 November 2020 and matured on 4 November 2023, governed by Hong Kong law and now held by Pinda Asset Management Pte Ltd (the ***CB Holder***). Accrued and unpaid interest as at 30 June 2025 was US$7,754,203, and default interest (at 15%) was US$50,402,461 (see Cheng-1 at [39] - [42]).

16. Each of the Notes and the Convertible Note is unsecured, ranks pari passu, and is guaranteed by the same four subsidiary guarantors**,** namely Fangyou Information Technology Holdings Ltd and CRIC Holdings (both BVI companies) and Hong Kong Fangyou Software Technology Company Limited and CRIC Holdings (HK) Limited (both Hong Kong companies) (the ***Subsidiary Guarantors***) (see Cheng-1 at [32] and [41]). The Company is in default under each of the instruments (see Cheng-1 at [38], [42] and [49] - [50]).

**Events since the lapse of the 2023 Scheme**

17. Following the lapse of the 2023 Scheme the Company continued to explore alternatives, including a 2 April 2024 proposal and a possible sale, neither of which proceeded (see Cheng-1 at [85] - [88]). In the first quarter of 2025 an *ad hoc* group of Noteholders (the ***Ad Hoc Group***), advised by the law firm Ashurst, approached the Company and pressed for a debt-for-equity swap, indicating that, absent timely implementation, it might pursue a winding-up petition (see Cheng-1 at [89]). The Company appointed A&M as

financial adviser in June 2025, considered and rejected alternatives (refinancing, asset disposal, tender offer, equity fundraising, third-party investment), and concluded that a full equitisation of the Notes and the Convertible Note was the best available path (see Cheng-1 at [90]–[93]). A restructuring support agreement (the ***RSA***) was entered into and announced on 10 November 2025 (see Cheng-1 at [94]).

**The sanctions regime**

18. Since the 2022 Scheme and the 2023 Scheme there have been enhanced sanctions targeting the National Settlement Depository (the ***NSD***), a Russian central securities depository through which certain Scheme Creditors hold their Notes. The Company relies on the expert evidence of Mr Alexandre Haines of 4 Pump Court (a specialist in UK, EU and US sanctions) set out in his First Affidavit (***Haines-1***) to describe and explain these sanctions and their effect.

19. A material development since the 2023 Scheme is the designation of the NSD by the United States and the United Kingdom. The NSD was designated by the European Union on 3 June 2022 (and so was already designated at the time of the earlier schemes), but it was added to the US SDN List on 12 June 2024 (under Executive Orders 13662 and 14024) and made subject to a UK asset freeze on 13 June 2024 under the Russia (Sanctions) (EU Exit) Regulations 2019 (which apply to the Company as extended to the Cayman Islands) (see Haines 1 at [22] and Cheng-1 at [107]-[108]). The Company says that it is this change (the US and UK designations of the NSD) that gives rise to the different treatment of Blocked Scheme Creditors in the Scheme compared with the 2022 Scheme and 2023 Scheme, and which the escrow architecture in the Scheme is designed to accommodate (see Haines 1 at [23]-[24] and the Explanatory Statement at clause 6.24(d)). The Company's evidence is that it is aware of Noteholders representing approximately 3.37% of the indebtedness subject to the Schemes who hold their Notes through the NSD. These are Blocked Scheme Creditors who were not entitled to vote at the Scheme Meeting. However, the Company was not aware that any Noteholders (including any of the Blocked Scheme Creditors) or the CB Holder who were themselves designated persons (referred to under the Scheme as a Sanctioned Scheme Creditor). The concern in this case arises from the status of and sanctions imposed on

the NSD as custodian rather than from the status of and sanctions imposed directly on the Blocked Scheme Creditors themselves (see Cheng-1 at [108.3]).

**The Scheme**

20. The Company says that the principal objective of the Restructuring is to compromise the Company's entire offshore indebtedness (the Notes and the Convertible Note) by converting it in full into equity in the Company, so as to avoid an insolvent liquidation in which recoveries would be close to zero; to alleviate cash-flow pressure and enable the Group to continue as a going concern as the PRC market stabilises; to deleverage the Company's balance sheet and to give Scheme Creditors the opportunity, as shareholders, to participate in any future recovery in the Group's equity value (see Cheng-1 at [92] and the Kroll Report at [6.3]–[6.4]).

21. The Scheme is, in structure, a straightforward debt-for-equity swap. There is no cash consideration, no new debt instrument and no rights issue. In consideration for the release, cancellation, compromise and discharge of the Notes and the Convertible Note (and the related guarantees), each Scheme Creditor will receive newly issued ordinary shares in the Company (the ***Shares***) (see Cheng-1 at [95] - [100] and the Scheme at clause 6.2). The mechanism is structured in two stages: a ***Scheme Effective Date*** (Clause 5), on which the Scheme becomes effective once this Court sanctions it and the sanction order is registered; and a ***Restructuring Effective Date*** (Clause 6), on which, the Restructuring Conditions having been satisfied or waived, the releases take effect, the debt is cancelled and the Shares are issued. The compromise binds the Company, the Subsidiary Guarantors and all Scheme Creditors and their successors, assigns and transferees (see the Scheme at clause 4.1). If the Restructuring Effective Date does not occur by the Longstop Date, the Scheme lapses and ceases to have any effect (see the Scheme at clause 4.2).

**The Restructuring Consideration and how it is calculated**

22. The consideration is defined by the Scheme. For each US$1,000 (or the HK$ equivalent) of Scheme Creditor Claim at the Record Time, an eligible Scheme Creditor is entitled to a number of Shares representing 0.0002396468% of the total issued and outstanding Shares at the Record Time (rounded down to the nearest whole Share). The Shares to be issued are ordinary shares of the Company, of the same class and with the same rights as all other Shares. The ***Scheme Creditor Claim*** is defined in Clause 1 of the Scheme as the sum of (a) the outstanding principal of the Notes held at the Record Time, (b) accrued and unpaid interest on the Notes to (but excluding) 30 June 2025, (c) the outstanding principal of the Convertible Note held at the Record Time, and (d) accrued and unpaid interest on the Convertible Note to (but excluding) 30 June 2025. The definition of Scheme Creditor Claim does not capture default interest payable under the CB. The Record Time is 24 August 2026.

23. By way of illustration given in the evidence, a Scheme Creditor with a Scheme Creditor Claim of US$100,000 would receive 419,156 Shares (see Cheng-1 at [99]). In aggregate, the Restructuring Consideration represents approximately 216.666% of the Company's current issued share capital, such that, on completion, the Scheme Creditors will hold approximately 65% of the enlarged issued share capital (before any Instruction Fee Shares) (see Cheng-1 at [100]).

**The Instruction Fee**

24. Scheme Creditors who acceded to the RSA, voted in favour of both Schemes and satisfied the other RSA conditions (***Eligible Consenting Creditors***) are entitled to an Instruction Fee, payable solely in Shares. The Instruction Fee is a pool of Shares representing 16.666% of the Shares in issue at the Record Time, allocated among Eligible Consenting Creditors in proportion to the Eligible Notes and Eligible CB they hold, and is expected to represent approximately 5% of the enlarged share capital (see clause 1.1 of the Scheme and Cheng-1 at [101]). A qualifying Scheme Creditor with a Scheme Creditor Claim of US$100,000 will receive a further 59,591 Shares. No Blocked Scheme Creditor acceded to the RSA and so none will be entitled to receive the Instruction Fee (Cheng-1 at [114]).

**Retained equity and the chairman's loans**

25. Upon implementation of the Scheme, the Company's existing shareholders will retain approximately 30% of the enlarged share capital with the Scheme Creditors holding approximately 65% as Restructuring Consideration and approximately 5% as Instruction Fee Shares (see Cheng-1 at [100] - [101]). In addition, certain payables, principally professional fees, and the shareholder loans owed to the Company's chairman are not compromised by the Scheme (see the Explanatory Statement at [5.10]).

**Treatment of Blocked Scheme Creditors**

26. Blocked Scheme Creditors are defined in the Scheme as follows:

> *(a) a Scheme Creditor that is not entitled, able, permitted or authorized (whether directly or through a custodian) to submit instructions or settle through the Clearing Systems as a result of any Applicable Sanctions affecting the Scheme Creditor or its custodian as determined by the Clearing Systems, or (b) would not be entitled, able, permitted or authorized to submit instructions or settle through the Clearing Systems if the Scheme Creditor were a Person subject to the jurisdiction of the European Union or any of its Member States, the United States of America, the United Kingdom or any of the British Overseas Territories (e.g., as of the date hereof, any Scheme Creditor holding Notes through the National Settlement Depositary), but in each case, does not include any Scheme Creditor that is a Sanctioned Scheme Creditor.*

27. Four main features of the Scheme are responsive to and accommodate the applicable sanctions:

(a). first, the cancellation and discharge of the Notes does not apply to the extent that this would breach the applicable sanctions. The release, cancellation and mark-down will take effect automatically as soon as the applicable sanctions cease to prohibit them (see clauses 6.2(b)(i)–(ii) and 6.3(a) of the Scheme and Cheng-1 at [110.2]).

(b). secondly, the Restructuring Consideration to which a Blocked Scheme Creditor would otherwise be entitled is issued to the Escrow Agent (i2 Capital Trust Corporation Ltd) and held in the Escrow Account for an Escrow Period of 180

days, legal and beneficial title remaining with the Company and the Blocked Scheme Creditor having a right to receive its entitlement once it is no longer restricted. If the applicable sanctions remain in place at the end of the Escrow Period, the consideration passes to a Successor Escrow Agent for a perpetuity period of up to 20 years (which is extendable) with a claims process for Blocked Scheme Creditors once no longer restricted, and with any unclaimed entitlement ultimately returning to the Company (see clauses 6.2(g) and 7 of the Scheme and Cheng-1 at [110.3]).

(c). thirdly, clause 6.7 provides that nothing in the Scheme requires or authorises any person to act in breach of the applicable sanctions and clause 18.2 confers a power on the Company to modify the Scheme so that it is not contrary to them.

(d). fourthly, Blocked Scheme Creditors are not permitted to vote at the Scheme Meeting, but they are given rights to express their views and listen to the Scheme Meeting to the fullest extent possible without risking a breach of the applicable sanctions. Why the treatment of Blocked Scheme Creditors takes this form is explained by the evidence of Mr Haines, and in particular by the breadth of the US prohibitions. In summary, because the NSD is on the US SDN List, all property and interests in property of the NSD within the US or in the possession of a US person are blocked, and, critically, no US person may facilitate, directly or indirectly, any transaction with or for the benefit of the NSD, including any dealing in the blocked securities (see Haines - 1 at [44] - [45] and [51]). A Noteholder's voting rights, where the Notes are held through the NSD, are rights derived from a blocked asset. Accordingly, if a Blocked Scheme Creditor was permitted to vote, any US person involved in facilitating that vote would be facilitating a dealing with a blocked asset, and there is in addition secondary-sanctions risk for non-US persons. The same logic applies to the consideration. Were the Company to issue Shares to a Blocked Scheme Creditor that would be making funds or economic resources available, directly or indirectly, in a manner that the sanctions prohibit (Haines -1 at [61]-[64] and [73]). The Scheme therefore (a) prohibited Blocked Scheme Creditors from voting, (b) deferred the cancellation and discharge of NSD-held Notes until the sanctions allow, and (c) routed the Blocked Scheme Creditors' consideration

into escrow with legal and beneficial title retained by the Company. The Company submitted that on Mr Haines' evidence, those features eliminated the US-sanctions risk to the Company and the parties involved in the restructuring and Scheme approval process (see Haines -1 at [51], [63] and [73]).

**Releases**

28. On the Restructuring Effective Date each Scheme Creditor releases the Released Persons from their obligations and liabilities under or in connection with the Notes Documents and the Convertible Note Documents, and releases its Released Claims, in consideration for its entitlement to the Restructuring Consideration (see clause 8.1 of the Scheme and Cheng -1 at [98]).

29. The Released Persons are the Company, the Subsidiary Guarantors, the Group, their Affiliates, Personnel and Advisers, the Notes Trustee Group, the Escrow Agent, the Information Agent, the Cayman Islands Information Agent, the Scheme Supervisor, the Authorised Signatories, and any Delegate (see clause 1 of the Scheme).

30. The releases are subject to the carve-outs in clause 8.3, which include rights under the Scheme and the Restructuring Documents; claims for fraud, gross negligence or wilful misconduct; claims against directors or officers for breach of duty unconnected with the Notes Documents, the Convertible Note Documents or the preparation, negotiation, sanction or implementation of the Scheme and/or the Restructuring Documents; claims against an adviser under a duty of care to its client; and the Releases do not prejudice the rights and immunities of the Notes Trustee, Paying and Transfer Agent and Depositary. The releases are given by the Scheme Creditors, not by the Company (see Cheng -1 at [97]) and the scope of the releases follows that sanctioned in the 2022 Scheme and the 2023 Scheme.

**Conditions to the Restructuring Effective Date and the Longstop Date**

31. Clause 6.1 sets out the conditions that must be satisfied in order for the Restructuring Effective Date to occur as follows (my underlining):

*The Restructuring Effective Date will occur on the Business Day on or before the Longstop Date on which the Company gives notice to the Scheme Creditors through the Transaction Website that the following conditions have been satisfied or waived by the Company (if applicable, other than in respect of paragraph (f) below which cannot be waived by the Company) and that the Restructuring Effective Date has occurred (which notice the Company is required to give as soon as practicable after all Restructuring Conditions have been satisfied or waived, unless the Cayman Court orders otherwise):*

*(a) each of the Scheme Conditions has been satisfied, and the Scheme Effective Date has occurred [the Scheme Conditions are the sanction of this Scheme (with or without modification) by this Court and the delivery of a sealed copy of the Scheme sanction order to the Registrar of Companies for registration];*

*(b) each of the HK Scheme Conditions has been satisfied, and the HK Scheme Effective Date has occurred;*

*(c) the shareholders of the Company having approved the issuance of the new Shares for payment of the Scheme Consideration;*

*(d) the Company having obtained conditional listing approval from the SEHK for the listing of and permission to deal in the new Shares;*

*(e) the U.S. Bankruptcy Court has granted the Chapter 15 Recognition and Enforcement Order in terms satisfactory to the Company; and*

*(f) the Company has paid all the fees, costs and expenses of all of its Affiliates, the Advisers, the Information Agent, the Cayman Islands Information Agent, the Scheme Supervisor, the Escrow Agent and the Notes Trustee Group pursuant to the terms agreed between the Company and the relevant parties and, other than with respect to the Notes Trustee Group, subject to any agreed caps (including under the RSA), and that have been duly invoiced to the Company.*

32. The Company said that it did not foresee any difficulty in the conditions being satisfied. The most significant of them (shareholder approval of the share issuance) had been obtained before the Convening Hearing. Importantly, none of these conditions reproduced the cash-funding or asset-transfer contingencies that defeated the earlier schemes.

33. The Longstop Date is 31 December 2026, extendable by the Company only with the agreement of the Majority Scheme Creditors (Scheme Creditors representing a majority in number holding at least 75% in value of the Scheme Creditor Claims of all Participating Scheme Creditors). If the Restructuring Effective Date does not occur by

the Longstop Date, the Scheme lapses. The Scheme is expressed to be unaffected by any present or future liquidation of the Company and to remain in force according to its terms in that event.

**The comparator**

34. The comparator is what would likely happen if the Scheme does not proceed (see *Re Stronghold Insurance Co Ltd* [2019] 2 BCLC 11 at [48] - [49]). The Company's primary case was that the comparator here is a Group-wide liquidation. The Company is in default under all three instruments, the principal sums are due, and the Company is insolvent on both a cashflow and balance sheet basis (see Cheng-1 at [115] and section 10 of the Explanatory Statement).

35. The Company acknowledged that, although it had told creditors and the Court in 2022 and 2023 that it expected to be wound up if those schemes failed, that did not happen. The Company submitted that however the position is different now. There had been no forbearance, the Ad Hoc Group had indicated that absent timely implementation it would consider a winding-up petition and a winding up of the Company would trigger a cascade of liquidity events across the Group (see Cheng -1 at [116] - [117]). The Company relied on the Liquidation and Scheme Analysis of Kroll (HK) Limited dated 16 June 2026 (the ***Kroll Report***) (with which Dr Cheng agrees: Cheng -1 at [118] and [121]). Kroll analysed the Group on a consolidated, segment-by-segment basis across six segments, an approach used for the 2022 and 2023 Schemes and one which, on Kroll's own assessment, tended to overstate rather than understate the liquidation return (see the Kroll Report at [2.1] - [2.10]). Kroll relied on the Group's unaudited management accounts at 31 December 2025, which it had reconciled to the audited financial statements published on 29 April 2026 and found to be materially the same for its purposes (a note to that effect had been added to the Kroll Report in the Explanatory Statement before despatch).

36. Kroll had estimated that in a liquidation there would be a recovery to Scheme Creditors of between 0.43% and 1.63%, comprising approximately 0.35% to 0.68% from the Company itself and 0.08% to 0.95% from the Subsidiary Guarantors. These low figures reflect deposits and receivables that are largely irrecoverable on an insolvency, forced-

sale discounts in a depressed market, and the conservative attribution of no value to the listing: Kroll Report.

37. Kroll had estimated recoveries under the Scheme by assessing the implied post-restructuring equity value as the sum of the Company's traded equity value before the RSA announcement and the market-implied value of the debt being converted, derived from Bloomberg BVAL pricing of the Notes. On a Neutral Case, the estimated recovery is 2.87%. On a deliberately conservative Adverse Case it is 2.11%, with an additional 0.33% and 0.24% respectively for Eligible Consenting Creditors by reason of the Instruction Fee. The Neutral Case used market prices as at 7 November 2025, which was the last trading day before the RSA was announced, when the Notes bid at approximately 3.1% of par. The Adverse Case used prices as at 4 June 2026, which was after the announcement, when the Notes bid at approximately 2.55% of par. No upside case had been presented.

38. The Company argued that the rationality of the Scheme (the rationality of a decision to vote in favour of the Scheme) did not depend on acceptance of liquidation as the comparator. Even if a *status-quo* comparator was used, the Company said, an honest, intelligent and reasonable Scheme Creditor could approve a scheme that converts long-defaulted, non-performing debt into a direct equity interest in the listed parent, because the prospect of any return lies in a turnaround that cannot occur unless the debt burden is removed.

39. The Company noted that the comparator was put to Scheme Creditors in the Explanatory Statement and no Scheme Creditor had challenged it, adduced any evidence to the contrary, or given any reason for voting against the Scheme. The Court was therefore entitled to treat the comparator as established on the evidence, and to use it as the reference point for the assessment of fairness.

**The Convening Order**

*The issues*

40. The principal issues to be determined at the convening stage were class composition and creditor notification, together with any other essential issues which, if decided against the Company, would mean that the Court had no jurisdiction or would unquestionably refuse sanction (sometimes called a *roadblock*): see the Practice Direction No 2 of 2010 (the ***Practice Direction***); *E-House 1* at [52] - [56], Justice Doyle's judgment in *Re China Aoyuan Group* Limited (unreported, 2 November 2023) and *Re Noble Group Limited* [2019] BCC 349 at [75] - [81].

41. Accordingly, at the Convening Hearing I considered the following issues:

(a). that the Court has jurisdiction to convene meetings of Scheme Creditors and to sanction the Scheme.

(b). the adequacy of notification of the Convening Hearing to interested parties.

(c). the Company's proposal for a single class of creditors to consider and vote on the Scheme.

(d). the Company's proposals for notice, timing and conduct of the Scheme Meeting.

(e). the relevant documentation.

(f). whether any jurisdictional roadblock was apparent at that stage.

*Jurisdiction*

42. The Company is a Cayman Islands incorporated exempted company and so falls within the definition of "*company*" in section 86(5) of the Companies Act and is liable to be wound up under Part V. The Court accordingly had jurisdiction under section 86 to

convene the Scheme Meeting (see *E-House 1* at [55] and *China Aoyuan* at [18]). The Scheme is plainly a "*compromise or arrangement*" within section 86.

*Adequate notice*

43. I was satisfied that adequate notice of the Convening Hearing had been given. The appropriate notice period is fact-sensitive in each case, turning on the relevant scheme's complexity, the urgency of the company's position and creditor sophistication (see *Re Lecta Paper UK Ltd* [2019] EWHC 3615 (Ch) at [10] and *E-House 1* at [52] - [53]). In this case the practice statement letter had been sent on 5 June 2026 giving Scheme Creditors adequate notice of the Convening Hearing on 3 July 2026.

*Class composition – a single class and the applicable law*

44. The Company submitted that in this case a single class comprising the Noteholders and the CB Holder was appropriate (the Explanatory Statement had set out the Company's class analysis at [6.6]).

45. The Company submitted that the basic principle was that a class "*must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest*" (see *Sovereign Life Assurance Co v Dodd* [1892] 2 QB 573 at 583 (Bowen LJ) and *Re Hawk Insurance Co Ltd* [2002] BCC 300 at [30]). That formulation has been adopted and applied in this Court, including at the convening stage (see *Re Ocean Rig UDW Inc* [2017] (2) CILR 495 (Parker J) and *China Aoyuan* at [12] - [14]).

46. The Company said that classification requires consideration of creditors' rights both if the scheme is implemented and if it is not, by reference to the proper comparator (see *Re Hawk Insurance* at [30] and *Re Port Finance Investment Ltd* [2021] EWHC 378 (Ch) at [78] - [79]). It is creditors' legal rights, not their separate commercial or other interests, that determine class - conflicting interests may be considered at sanction as a matter of discretion (see *Re UDL Holdings Ltd* [2002] 1 HKC 172 at [27]).

47. The Company also noted that material differences in rights do not necessarily fracture a class, and a proliferation of classes should be avoided so that the test does not become an instrument of oppression by a minority (see *Re Hawk Insurance* at [30] and *E-House 1* at [61] - [63]).

48. I briefly summarised the applicable law at [61] – [63] of *E House 1*. I accepted that the Company's summary of the applicable law as set out above was correct.

*Class composition – existing rights*

49. The Company submitted that as regards existing rights, the Noteholders and the CB Holder were in materially the same position. All were unsecured creditors of the Company, ranking *pari passu*, guaranteed by the same Subsidiary Guarantors. None of the Notes or the Convertible Note benefitted from any security, and there was no contractual or structural subordination as between them. The differences in maturity dates and interest rates did not require separate classes since (a) in the liquidation comparator, the contractual differences in tenor and coupon fall away: all claims are accelerated to the notional liquidation date, and proof for future or unaccrued interest is barred from that date, so that all Scheme Creditors share the same *pari passu* comparator return - the Explanatory Statement recorded that, in the relevant alternative of insolvent liquidation, all Scheme Creditors would have liquidated claims ranking pari passu and that the differences of instrument, currency, coupon, maturity and conversion were accordingly not material and (b) in any event, even taking a comparator of execution and enforcement in the PRC rather than a liquidation, there was no material difference in rights - the Notes and the Convertible Note were all unsecured, in default, guaranteed by the same Subsidiary Guarantors, and the differences in interest were not substantial relative to the claims as a whole.

50. I accepted these submissions.

*Class composition – rights under the Scheme*

51. As regards rights under the Scheme, the Company submitted that under the Scheme all Scheme Creditors were to be equitised rateably in proportion to their Scheme Creditor Claims and would receive the identical instrument, namely shares of the same class and with the same rights. Each Scheme Creditor also released its Released Claims against the Released Persons on the same terms.

52. Once again, I accepted the Company's submissions on this issue.

*Class composition – default interest*

53. The Company noted that the definition of Scheme Creditor Claim excluded default interest. Because default interest (at 15%) had accrued only on the Convertible Note (approximately US$50.4 million) and not on the Notes, its exclusion affected the position of the Noteholders and the CB Holder differently, being adverse to the CB Holder relative to the Noteholders in that the CB Holder's equity entitlement would be calculated without reference to it. The Company submitted that this difference, however, did not fracture the class for two main reasons:

(a). first, the impact on the consideration received was minimal, and the Explanatory Statement had quantified it. Adjusting the Kroll recovery analysis to include default interest, the estimated Restructuring-Consideration recovery for the Noteholders and the CB Holder would be approximately 3.47%/2.55% and 3.91%/2.87% (Neutral Case/Adverse Case) respectively. If default interest is excluded (as the Scheme does), the corresponding figures are approximately 3.66%/2.69% and 3.04%/2.23% respectively. The difference to the CB Holder was therefore modest and was set against a liquidation comparator of only 0.43% to 1.63%, so that the recovery under the Scheme materially exceeded the liquidation outcome whether or not default interest was included.

(b). and in any event, the CB Holder had consented to being placed in the same class as the Noteholders notwithstanding this potential adverse difference in treatment. It had acceded to the RSA, did not consider its proposed equity

allocation unfair, and supported the single-class Scheme. Nor had any Noteholder identified any class issue on this point. While consent did not itself determine class (which turned on legal rights), the CB Holder's agreement to share a class despite the point being to its potential disadvantage confirmed that the rights were not so dissimilar as to preclude common consultation, and disposed of any suggestion that the default-interest treatment required a separate class.

54. In a judgment delivered in Hong Kong in *Re Powerlong Real Estate Holdings Limited* [2026] HKCFI 3836 (3 July 2026) (which was decided immediately before the Convening Hearing and a copy of which I provided to the Company's counsel in advance of that hearing), I dealt with a similar case where some scheme creditors had a contractual *right* to be paid default interest but their scheme claim was calculated on the basis that accrued default interest would be ignored. I summarised the analysis of whether this difference in rights held by scheme creditors would fracture the class as follows (the law in Hong Kong is the same as in this jurisdiction on this point) (my underlining):

> *67. In the present case, default interest is excluded when calculating the Scheme Creditor's entitlement under the Scheme. The definition of Restructuring Entitlement in the Scheme is stated to mean "the sum of (a) the outstanding principal amount of the Existing Debt Instruments held by that Scheme Creditor at the Record Time and (b) all accrued and unpaid interest (except for any default interest or other special interests or fees) on such Existing Debt Instruments up to (and including) 30 June 2024." Accordingly, Scheme Creditors with a right to ordinary interest can add the accrued interest to their claim but Scheme Creditors with a right to ordinary interest and to default interest must exclude the default interest component and therefore are required to waive part of their right to interest.*
>
> *68. But I accept that the mere existence of different rights before the sanctioning of and of different treatment under a scheme does not of itself require that the relevant scheme creditors must be put in separate classes. As Mr Justice Hildyard said in England in Re Lehman Brothers International (Europe) (in administration) [2018] EWHC 1908 (Ch) a material difference in legal rights does not of itself require the formation of a different class. The essential requirement is that the (each) class should be comprised only of persons whose rights are sufficiently similar to enable them properly to consult and identify their true interests together. Or to put it another way, the question is whether the*

*rights to be released and discharged by the scheme or the new rights which the scheme gives in their place are so different as to require that their holders be permitted to deliberate separately.*

*69. I am satisfied, for the reasons given by the Company, that the rights of the Scheme Creditors with an entitlement to default interest which is to be released by the Scheme and the resulting difference in entitlement to the Scheme consideration are not so different from Scheme Creditors with a right only to ordinary interest as to require that the default interest Scheme Creditors be permitted to deliberate separately.*

*70. In this case, as noted above, the applicable default interest rates range from 2.00% to 4.25% per annum in addition to the original interest rate; the aggregate default interest accrued to 30 June 2024 across all Existing Loans is approximately US$3.33 million, representing only around 0.50% of the Existing Loan Lenders' total estimated Scheme Claims of US$669.67 million; on a lender-by-lender basis, default interest represents approximately 0.25% to 1.23% of each relevant lender's total claim and if default interest were included in the Scheme Consideration calculation, the estimated recovery for affected creditors would increase by only 0.04% to 0.16% . The amount of default interest involved is relatively small. Further, as I have noted above, the average estimated returns under the Scheme are approximately 12.00% - 17.50% so that an assessment of the materiality of the difference in treatment by reference to projected rates of recovery also indicates the difference is not sufficiently material to require a separate class of default interest Scheme Creditors. An additional 0.04% - 0.16% recovery on top of these approximate returns does not seem to me to be sufficiently material. As Justice Harris put it in Re Sunac the difference arising from the exclusion of default interest is not so stark that it is impossible for creditors to consult together with a view to their common interest.*

55. The question is whether the difference in rights and treatment under the Scheme is so material to the CB Holder that it would be unfair to require (a) the CB Holder to vote with and be bound by the decision of the Noteholders or (b) the Noteholders to vote with and be bound by the decision of the CB Holder. For this purpose, it is important to focus on the estimated recoveries in the comparator and under the Scheme. In this case, as the Company explained and I have noted above, prohibiting the CB Holder from adding default interest (which in this case is a very large amount) to its Scheme Claim only increases the estimated recovery for the Noteholders by a small absolute amount (from 3.47%/2.55% to 3.66%/2.69%) and reduces the estimated recovery for the CB Holder by a small absolute amount (from 3.91%/2.87% to 3.04%/2.23%). I can see that the increase and reduction can be viewed as more significant if considered

relative to (as a percentage of) those estimated recoveries but even then it seemed to me that it could fairly be characterised as not material. As the Company noted, the recovery under the Scheme even if default interest was excluded still materially exceeded the estimated liquidation outcome, so that both the CB Holder and the Noteholders could assess the choice between the Scheme and the alternative from a similar perspective. It is also relevant, as the Company argued, that the CB Holder had consented to this treatment. While this is not definitive (because the Noteholders could still object to being put in the same class with the CB Holder), it is of significant weight.

*Class composition – the Instruction Fee*

56. The Company also submitted that the Instruction Fee did not fracture the class. The Company was unable to pay a customary cash consent fee and therefore had to offer equity consistent with the deleveraging objective. The fee to be paid in kind was offered to all Scheme Creditors on equal terms (i.e. accession to the RSA before the Instruction Fee Deadline), and was *de minimis* relative to the overall choice between the Scheme and the alternative. A consent fee of this kind did not therefore fracture a class and was only to be considered as a matter of fairness at the sanction stage (see *Re DX Holdings Ltd* [2010] EWHC 1513 (Ch) at [7] and *E-House 1* at [66], [69] - [70]).

57. The Instruction Fee is only available to Eligible Consenting Creditors and in this case is expected to represent approximately 5% of the enlarged share capital of the Company.

58. The Company said that it had been offered and available to all Scheme Creditors and I accepted that this was correct at the Convening Hearing, although as I discuss below and as I pointed out at the Sanction Hearing, the Instruction Fee was not offered or available to the Blocked Scheme Creditors because entitlement to be paid the Instruction Fee required a Scheme Creditor not only to have acceded to the RSA and satisfied the other RSA conditions but also to have voted in favour of both Schemes, which Blocked Scheme Creditors were not permitted to do (the Company pointed out that Blocked Scheme Creditors were invited to become parties to the RSA but none did so).

59. I set out the relevant law at [68] – [73] of *E House 1*. On the face of it and as a matter of first impression, a 5% share of the post-restructuring capital of the Company is not *de minimis*, particularly in a case such as this where the projected recoveries in a winding up and under the Scheme are very low. However, the materiality of the difference in rights and additional benefits given to Eligible Consenting Creditors (and to the decision making of Eligible Consenting Creditors and other Scheme Creditors) depends on the likely value of such a shareholding. At the Convening Hearing I was prepared to accept the Company's submission that in this case, in light of the Company's difficult financial position even following the implementation of the Scheme, a 5% share of the post-restructuring capital of the Company could be treated as *de minimis* and not material in financial terms, but on the basis that the position might need to be revisited if objections were raised at the sanction stage by dissenting Scheme Creditors.

*Class composition – the Blocked Scheme Creditors*

60. The Company argued that the rights and treatment of the Blocked Scheme Creditors also did not fracture the class. Their rights under the Scheme remained substantially the same as those of other Scheme Creditors, their blocked status being a matter of interests (arising from the current sanctions environment) rather than of rights against the Company.

61. The Company said that in *E-House 1* I had considered the position of Blocked Noteholders on materially the same facts and on class I had accepted (applying Marcus Smith J in *Re Haya Holdco 2 plc* [2022] EWHC 1079 (Ch)) that there was a fundamental distinction between a scheme conferring different rights on different creditors and one conferring the same rights on all but with some unable to enjoy those rights by virtue of a personal characteristic. The latter did not fracture the class, being a difference in interests not rights: *E-House 1* at [72]. The Company said that this was the position in the present case.

62. The distinction between rights and the enjoyment of rights was one that had been repeatedly and recently affirmed in the context of sanction affected scheme creditors. It was also relevant to the exclusion from voting of Blocked Scheme Creditors. The

Company submitted that the relevant authorities established the following propositions: (a) a creditor's status as a sanctions disqualified person was a personal characteristic, not a difference in legal rights. That characteristic had certain consequences; (b) the creditor may be precluded from voting; and (c) the creditor's restructuring entitlements should be paid into a holding period trust, rather than transferred directly. In this case, the personal characteristic was a holding via the NSD, rather than a designation of the Blocked Scheme Creditors themselves. It was that characteristic that engaged applicable sanctions.

63. The Company cited the following authorities:

(a). in *Re Nostrum Oil & Gas plc* [2022] EWHC 1646 (Ch) at [40] - [43] Mr Justice Meade had held as follows (my underlining):

> *"As pointed out by Marcus Smith J in Re Haya Holco 2 plc [2022] EWHC 1079 (Ch), there is a fundamental distinction between a scheme conferring different rights on different groups of creditors and a scheme conferring the same rights on all creditors with but some creditors are unable to enjoy those rights by virtue of some personal characteristic that they possess. The latter situation should not fracture the class, as it involves a difference in interests rather than rights ... Sanctions Disqualified Persons will not, because of their status as such, be able to vote on the Scheme. I note however that the (current) Sanctions Disqualified Persons signed up to the Lock-Up Agreement prior to their being sanctioned and this strongly indicates that they did not object to the Scheme and would be unlikely to do so now. In any event, in my opinion the issue of sanctions relates, if anything, to the fairness of the Scheme, which is not a question I need to decide at this stage*.

(b). in *Re Praesidiad Ltd* [2024] 1 BCLC 506, at [31] - [34] Sir Alastair Norris adopted and applied the above holding in *Nostrum*.

(c). in *Re SGB-SMIT GmBH* [2023] EWHC 1067 (Ch) at the convening hearing Bank GPB International SA, a sanctions disqualified lender, objected to its exclusion from voting and from exercising rights until it was established it was not subject to sanctions. Joanna Smith J concluded at [46] that no class issue arose in these respects. She held that:

> *"The question is whether these features fracture the class. In my judgment, they do not. The restrictions to which Sanctions disqualified*

> *persons are subject and corresponding differences in treatment under the Restructuring Plan go merely to the enjoyment of that Plan Creditor's rights under the Restructuring Plan, and therefore do not raise any class issues. As Mr Smith pointed out in his written submissions, this is particularly important given that the group of Plan Creditors subject to Sanctions could change at any time and it would be unworkable for the Restructuring Plan to put them in a different class depending on the Sanctions that happen to be in place at any given moment in time. This is consistent with the approach taken in relation to schemes involving sanctioned plan creditors. In Re Nostrom* [sic] *Oil & Gas PLC [2022] EWHC 1646 (Ch) (convening judgment) at [43] Meade J held that the issue of sanctions "relates if anything to the fairness of the scheme" and that "the mechanisms put in place to deal with sanctions do not fracture the class". This is because "[a]ll creditors have against the company the same entitlement. The difference is the extent to which the creditors can, for external reasons, enjoy those rights". See Re Veon Holding BV [2022] EWHC 3473 (Ch) at [52]. See also Nostrom* [sic] *(convening judgment) at [40].*

(d). in *Re SGB-SMIT GmBH* [2023] EWHC 2251 (Ch) at the sanction hearing Bank GPB International SA persisted in its opposition. Sir Alastair Norris said at [8] and [28]:

> "*First a meeting of the TLB and RCF lenders. But under a supplemental direction given, the Sanctioned Lender could not participate in that meeting. This direction followed the cautious approach adopted in Nostrum Oil & Gas PLC [2022] EWHC 1646 (Ch) and Re VEON Holdings BV [2022] EWHC 3473 (Ch). In neither case were the sanction Regulations the subject of detailed argument or analysis; but each of them adopted the approach of excluding a sanctioned creditor from participation in the plan meeting. This approach is consistent with the general tenor of the Regulations viz. that sanctioned holders of economic interests should not be able to exercise the rights attached to those interests.*
>
> *……*
>
> *The ground of complaint is that the impact of the general scheme provisions upon the sanctioned lender is different because of the personal characteristics of Bank GPB International SA. It must be a rare case where the personal characteristics of one plan creditor can determine the terms of a scheme binding on all creditors.*

64. The Company noted that in *E-House 1* I had held that, where voting was not unlawful, the Blocked Noteholders could not be deprived of the right to attend and vote. I held that parties to a scheme whose rights are varied or discharged are entitled to attend and

vote, and section 86 requires that all creditors made parties be summoned and allowed to vote (*E-House 1* at [73], [75] - [77]). My conclusion that the Blocked Noteholders had to be allowed to vote had rested expressly on the fact that voting would not itself have been unlawful. I said at [74]:

> "*There is no evidence that attendance of any Blocked Noteholder or voting by a Blocked Noteholder at the Scheme meeting would be unlawful and a breach of relevant sanctions. If that were the case, the position would be different." (Emphasis added.)*

The obstacle in E-House No1 was therefore merely the practical one that the usual clearing-system channel was unavailable, which the Company cured by an alternative direct-voting mechanism.

65. But in this case, the Company said, unlike in *E-House 1*, voting by the Blocked Scheme Creditors *would* be unlawful at least under the US sanctions. The NSD had, since the 2022 Scheme, been designated by the United States (and the United Kingdom), and the result of the US designation was, according to the expert evidence adduced by the Company, that under US law the exercise of voting rights derived from NSD-held Notes (and any US person's facilitation of it) would breach the applicable sanctions. The Company said that the decision in *E-House 1* was distinguishable as I had clearly stated that I was not dealing with a case where sanctioned creditors were prohibited by sanctions from dealing with their notes, so that voting would have been unlawful (see [79] - [80]).

66. The Company argued that my analysis and decision in *E-House 1* confirmed that the impact of sanctions on the Blocked Scheme Creditors was a matter going only to fairness to be assessed at the sanction stage (consistent with *Nostrum* at [43]) so that there was no class issue or other roadblock at the convening stage. The Company submitted that it will be relevant to the assessment of the fairness of the treatment of the Blocked Scheme Creditors that it had put in place special arrangements for the Blocked Scheme Creditors which would allow them to express their views on the Scheme (including how they would vote if they had been permitted to do so), for such views to be communicated at the Scheme Meeting, for them to observe the Scheme Meeting and for their views to be provided to the Court. The position was explained as follows in Cheng -1 at [142].

> *When the Company contacted Blocked Scheme Creditors by email, as referred to above, it included a covering email in which it explained that the Blocked Scheme Creditors would not be able to submit voting instructions on the Scheme, but invited them to provide an indication of their views on the Scheme should they wish to do so by email to the Company directly, as set out in the PSL. The Company will arrange for any views so received to be relayed by the Chairperson of the Scheme Meeting, solely for information purposes to attendees at the Scheme Meeting. The Solicitation Packet to be appended to the Explanatory Statement will also contain a "Blocked Scheme Creditor Intention Letter", which Blocked Scheme Creditors will be able to use to express their views on the Restructuring for the Chairperson to relay those views at the Scheme Meeting (see pages 1325 to 1328). Blocked Scheme Creditors will also be able to observe the Scheme Meeting.*

67. The Company said that the Blocked Scheme Creditors (representing only approximately 3.37% of the Notes, and circa 3% by value of Scheme Creditor claims) were unlikely to be material to the outcome of the Scheme Meeting.

68. The Company submitted that it did not matter that the risk of a breach of sanctions only arose in relation to US sanctions (so that there was no risk of a breach of Cayman Islands sanctions). The Company argued that the Court was not, by approving voting procedures in respect of the Scheme which prohibited Blocked Scheme Creditors from voting at the Scheme Meeting, giving direct or indirect effect to a foreign criminal law.

69. The Company further noted that as a matter of the private international law of the Cayman Islands the Court was precluded (the ***exclusionary rule***) from giving direct or indirect effect to a foreign criminal law (see *Dicey, Morris & Collins on the Conflict of Laws* (***DMC***), 16th Ed, Rule 20 at 8R-001 cited by Mr Justice Hildyard in *Re SCUR-Alpha 1092 GmbH* [2026] EWHC 1414 (Ch) (***Schleich***) at [93]). However, the Company submitted that the Court was not precluded from taking into account the sanctions law of a friendly foreign state in exercising its discretion to set the terms of a scheme meeting under its own law (by disenfranchising the Blocked Scheme Creditors in order to avoid a breach of the foreign sanctions law). The Scheme Meeting is a Court meeting whose procedures the Court is at liberty to determine including who was entitled to vote (see *Re Dee Valley plc* [2018] Ch 55 where Sir Geoffrey Vos C had held that the chairman of a scheme meeting - in a shareholders' scheme - was justified in rejecting the votes of 400 shareholders who had acquired one share each from an

employee who had himself acquired shares and then made these transfers in order to defeat the scheme, by ensuring that the numerosity requirement could not be satisfied).

70. The Company argued that the exclusionary rule was formulated as a prohibition against direct or indirect enforcement. The rule was stated in the following terms: "*English courts have no jurisdiction to entertain an action (1) for the enforcement, either directly or indirectly, of a penal, revenue or other public law of a foreign State*" Rule 20, DMC at 8-001. DMC states that "*Direct enforcement occurs where a foreign State or its nominee seeks to obtain money or property, or other relief, in reliance on the foreign rule in question*" and that *"Indirect enforcement is also prohibited, for a foreign State cannot be allowed to do indirectly what it cannot do directly. Indirect enforcement is, however, easier to describe than to define. Rule 20(1) relates only to enforcement, but it does not prevent recognition of a foreign law of the type in question, and it is sometimes difficult to draw the line between an issue involving merely recognition of a foreign law and indirect enforcement of it*." An affirmative example of indirect enforcement of a foreign (revenue) law was the appointment of a liquidator on the petition of a foreign state whose sole purpose was to pursue the revenue debt owed by the company in liquidation to the foreign state (see *QRS 1 ApS v Frandsen* [1999] 1 WLR 2169).

71. The Company submitted that there was no question of direct enforcement in the present case, and what was being done could also not be characterised as indirect enforcement because no remedy had been sought at the behest of a foreign state or its nominee. Rather, the Court was being asked by the Company to set the terms of its Court meeting to facilitate an effective scheme meeting given the necessary involvement of U.S. persons in the scheme process. In addition, the Company and the Court were entitled to have regard to the US sanctions when determining the manner in which the Blocked Scheme Creditors were to be treated and to defer their receipt of the Scheme Consideration by creating the escrow arrangements.

72. Further, in this case the Company was justified in not delaying the Scheme Meeting while it sought a licence and approval from the relevant sanction authorities, as had been done in *Schleich.* There creditor meetings were deferred voluntarily by the company until the necessary licence allowing for certain dealings with sanctioned

scheme creditors had been obtained. This had been necessary to ensure that the majority of creditors could vote and to allow U.S. persons necessary to facilitate the scheme to act. In this case, a licence from OFAC authorising dealing with Blocked Scheme Creditors was not necessary (because the Blocked Scheme Creditors only represented a small minority of the Scheme Creditors) and would be neither practical nor commercial. The Ad Hoc Group had made clear that it would not countenance any delays to the implementation of the restructuring, failing which it had suggested that it would consider taking further steps, including potentially presenting a winding-up petition (see Cheng -1 at [89], [110.1] and [116.2]). Seeking and obtaining a licence to authorise certain dealings with sanctioned scheme creditors was a voluntary step, not an obligatory one, and the question of whether to apply for a licence was one for the Company (see *Schleich* at [93]).

73. The Company argued that it had gone to some lengths to ensure that the Blocked Scheme Creditors had been kept fully informed, and that they were not only able to observe the Scheme Meeting, but also to provide an indication of their views on the Scheme – should they wish to do so – by emailing the Company directly, with those views which would then be provided to the Chairperson of the Scheme Meeting so that they may be relayed to the meeting. No Blocked Scheme Creditor had contacted the Company regarding the restructuring for any reason, including in respect of their inability to vote on the Scheme (see Cheng -1 at [141] - [143]). In these circumstances, there was no reason for the Court to conclude that any Blocked Scheme Creditor considered that its inability to vote on the Scheme was unfair and was able to conclude that excluding them from voting would respect applicable sanctions and not be inherently and obviously unfair, and that fairness and the materiality of the exclusion could be assessed at sanction after the Scheme Meeting.

74. I was satisfied that the treatment of the Blocked Scheme Creditors did not fracture the class:

(a). I dealt with the analysis of the impact of excluding scheme creditors from voting at [73] – [80] of *E-House 1*. Unlike some other judges in other jurisdictions, I have been less sanguine about the legitimacy of forcing creditors to be bound by a scheme in respect of which they cannot vote.

(b). the starting point is that a creditor who is made a party to a scheme (so as to be bound by the scheme if sanctioned) has a *prima facie* right to vote. This is a result of the interpretation of the relevant provisions of the Companies Act and basic fairness and natural justice.

(c). however, if a scheme creditor is prohibited from voting because of legislation or regulations applicable to it (which make its voting a criminal offence or if its voting would result in a criminal offence being committed by others involved in the scheme process) then the scheme creditor's inability to vote is not a result of a decision made by the company or a result of the terms of the scheme. Accordingly, the Blocked Scheme Creditor's pre-scheme contractual (or other) rights against the company are not being changed by the company or its scheme (so that it cannot be said that it is being treated differently from other scheme creditors on a rights-in basis). Further, as I noted at [3] of *E-House 1*, the prohibition on attendance and voting at the Scheme Meeting does not mean that the Blocked Scheme Creditors are being granted different and fewer rights from other Scheme Creditors under the Scheme. Therefore, there is no class issue.

(d). the prohibition goes to process by which the Scheme is to be considered by Scheme Creditors and the fairness (both procedural and substantive fairness which may engage the Bill of Rights) of the treatment of creditors who will be bound by the Scheme if sanctioned.

(e). the company should not pre-judge whether a particular creditor is subject to such legislation or regulations (the scheme creditor must be given the opportunity to show that it is not bound or affected by the legislation or regulations). However, if by permitting particular scheme creditors to vote the company would itself commit or others involved in the scheme process would be committing an offence, then a prohibition on voting imposed by the company is necessary and justifiable for that reason.

(f). the prohibition on voting results from a direction of the Court regulating the conduct of the Scheme Meeting, made to ensure that neither the Company nor those involved in the process of soliciting and processing votes and the conduct

of the meeting, are acting unlawfully. In the present case, the Company's evidence was that allowing the Blocked Scheme Creditors to vote or even to speak at the Scheme Meeting would be or result in a breach of the applicable US sanctions, with various serious consequences for affected US persons.

(g). the potential serious unfairness can be seen by a simple example. If a company has 100 scheme creditors and 30 are blocked scheme creditors who wish to vote against the scheme but are prohibited from doing so at the scheme meeting, a scheme which the blocked scheme creditors could otherwise have vetoed (by ensuring that the requisite majority did not vote in favour) will be capable of binding them if the Court were to sanction the scheme.

(h). the Court must, as it seems to me, be vigilant to ensure that any restrictions on a scheme creditor's *prima facie* right to vote on a scheme which is intended to be binding on it are as limited as possible and ensure that the scheme creditor's views will be made known (if they wish to express them) and can be taken into account by the Court when assessing fairness at the sanction stage.

(i). in a case in which there is evidence that the sanctioned and blocked creditors oppose the scheme, consideration should be given to whether their votes would have changed the outcome at the scheme meeting. It therefore becomes important for the company to make reasonable efforts to ascertain the wishes and views of the sanctioned creditors. The company should, to the extent possible and permissible, invite sanctioned creditors to express their views on the proposed scheme in advance of the scheme meeting (which will allow the chairperson at the meeting to inform those attending the meeting of the views so expressed).

(j). I was satisfied that the Company has satisfied these requirements in the present case. Special provision was made by the Company:

(i). to ensure that Blocked Scheme Creditors received notice of and had access to copies of the Explanatory Statement and the Scheme documents despite the Information Agent being unable to communicate

with them as a matter of the Information Agent's policy and the Blocked Scheme Creditors being unable to receive notifications or submit voting instructions through the Clearing Systems.

(ii). to highlight (in the Explanatory Statement) and draw to the attention of Blocked Scheme Creditors that despite being unable to vote, they were able to express their views on the Scheme and how they would have voted by filing a Blocked Scheme Creditor Intention Letter and that they were able to attend the Scheme Meeting (including remotely) if they wished to do so.

(iii). to ensure that the views of the Blocked Scheme Creditors as set out in the Blocked Scheme Creditor Intention Letter were made available to the chairperson at the Scheme Meeting (so that they could be communicated to those attending the meeting and to the Court).

(iv). to permit the Blocked Scheme Creditors to observe proceedings at the Scheme Meeting.

75. The relevant parts of the Convening Order were as follows (my underlining):

*4 Attendance at, participation in and voting at, (or, for Blocked Scheme Creditors, observing) the Scheme Meeting will also be permitted by video conference, using a link and log-in details that will be provided:*

*4.1 to Scheme Creditors, other than Blocked Scheme Creditors and the CB Holder, by the Information Agent on request sent by email to the Information Agent to E-House@dfkingltd.com; and*

*4.2 to the CB Holder and to Blocked Scheme Creditors, by the Company on request sent by email to the Company to ir@ehousechina.com*

……

*6 The Company has permission to set a record date as the latest date on which (a) the Information Agent must receive a valid Account Holder Letter from Scheme Creditors who are not Blocked Scheme Creditors or the CB Holder, (b) the Company*

*must receive a valid CB Holder Voting Form from the CB Holder, and (c) the Company must receive a valid Blocked Scheme Creditor Intention Letter from Blocked Scheme Creditors (together, the "Voting Instruction Deadline") in order for the Scheme Creditors' voting instructions (in respect of Scheme Creditors who are not Blocked Scheme Creditors) or views on the Scheme (in respect of Blocked Scheme Creditors) to be taken into account for the purposes of the Scheme Meeting.*

*7 Notice of the Scheme Meeting ("Scheme Meeting Notice") shall be given to Scheme Creditors not less than 35 days before the Scheme Meeting:*

*(a) for Scheme Creditors that are not Blocked Scheme Creditors, by notice on https://clients.dfkingltd.com/E-house/ (the "Transaction Website");*

*(b) for all Scheme Creditors, by announcement on the website of The Stock Exchange of Hong Kong Limited at https://www.hkexnews.hk/;*

*(c) for all Scheme Creditors, by announcement on the website of the Company at https://www.ehousechina.com;*

*(d) for Scheme Creditors that are not Blocked Scheme Creditors or the CB Holder, through the Clearing Systems in accordance with the procedures described in the First Affirmation of Chik Ho Yin Henry;*

*(e) by causing the Information Agent to send the notice via electronic mail to each Scheme Creditor for whom the Information Agent has contact details, other than Blocked Scheme Creditors;*

*(f) for Blocked Scheme Creditors, by the Company sending the notice via electronic mail to each Blocked Scheme Creditor for whom the Company has contact details, in addition to having the ability to access the announcements referred to as sub-paragraphs (b) and (c) immediately above; and*

*(g) for the CB Holder, by the Company sending the notice via electronic mail*

*9 When distributing the Scheme Meeting Notice in accordance with paragraph 7 above, the Information Agent or the Company, as applicable, shall also include the final form of the explanatory statement as referred to in paragraph 10 below (of which the*

> *Scheme Meeting Notice forms part) or an electronic link thereto, which contains, amongst other things: (a) the Scheme at Appendix 4; and (b) a Solicitation Packet (including the Account Holder Letter, the CB Holder Voting Form, and the Blocked Scheme Creditor Intention Letter) at Appendix*
>
> *8. The same documents shall be available on the Transaction Website and the website of the Company for Scheme Creditors to access.*
>
> ……
>
> *19. Any Blocked Scheme Creditor may observe the Scheme Meeting.*

76. I was also prepared to accept the Company's submission that the exclusionary rule did not prevent the Court from taking into account the effect of applicable US sanctions law when determining the directions to be given for the conduct of the Scheme Meeting, to ensure that US persons involved in the Scheme process were not liable for breach or exposed to a serious risk of breaching that law. I accepted that there was no direct or indirect enforcement of the US sanctions law in this case for the reasons given by the Company.

*The Company's proposals for notice, timing and conduct of the Scheme Meeting*

77. I was satisfied that the Company's proposals on these matters were sufficient for ensuring that Scheme Creditors would receive adequate notice of the Scheme Meeting and that the arrangements for the conduct of the Scheme Meeting would allow Scheme Creditors to participate appropriately.

*The relevant documentation*

78. I reviewed the draft Explanatory Statement and was satisfied that it provided sufficient information to enable Scheme Creditors to reach an informed view as to whether to vote for or against the Scheme and the terms of the Scheme, which seemed to me to be clearly and satisfactorily drafted. I was also satisfied with the other Scheme documents.

*Whether there was any jurisdictional roadblock in respect of the Scheme?*

79. The Company submitted that there were no apparent issues which if decided against the Company would mean the Court should refuse sanction.

80. The Company addressed two main issues. First international effectiveness and secondly whether the risk of a breach of applicable sanctions created a blot on the Scheme.

81. As to international effectiveness, the Company said that the Court did not need to be satisfied of certainty of recognition, but only of a real or reasonable prospect that the Scheme will have substantial effect: see my judgment in *Re Freeman Fintech Corporation Ltd* (Grand Court, 4 February 2021) at [25] - [31], the judgment in *Re DTEK Energy BV* [2022] 1 BCLC 260 at [27] and my judgment in *E-House 1* at [81] - [82]. The Company submitted that this standard was comfortably met, and was supported by detailed expert evidence in respect of each relevant body of law.

82. As regards the Notes (which are governed by New York law) and recognition of the discharge under the Scheme in the United States, the Company relied on the affidavit of the Honourable Allan L. Gropper, a retired judge of the U.S. Bankruptcy Court for the Southern District of New York, whose opinions on the 2022 and 2023 Schemes had been accepted by this Court (see *E-House 1* at [83] - [88]). Judge Gropper's opinion, in summary, was that: (a) the Cayman Islands proceedings in relation to the Scheme would be recognised as a foreign main proceeding under Chapter 15 of the U.S. Bankruptcy Code, the Company's centre of main interests being the Cayman Islands; (b) the Scheme would be recognised and enforced (not merely recognised), the relief sought being well within that routinely granted to Cayman and English schemes under Chapter 15, and not defeated by any public-policy objection and (c) the third-party releases and exculpations in the Scheme would be enforced in the United States, consistently with the recent authorities and notwithstanding *Harrington v Purdue Pharma* LP 603 U.S. 204 (2024) (which concerned domestic Chapter 11, not Chapter 15 proceedings).

83. The Company submitted that a point of particular importance for the effectiveness of the Scheme was Judge Gropper's third conclusion that the grant of relief in the Chapter 15 proceeding would have the effect of substantively discharging the Notes and the related guarantees for the purposes of both U.S. federal and U.S. state law, regardless of the fact that the Notes are governed by New York law. This conclusion meant first

that the New York-law Notes will, as a matter of the law of the place where they are to be enforced against the Company's U.S.-facing interests, be effectively and substantively discharged once Chapter 15 relief is granted, and secondly, that analysis carried through to recognition in the BVI (where two of the Subsidiary Guarantors are incorporated). The Company had been advised that BVI law will recognise and give effect to the compromise and the release of the BVI Subsidiary Guarantors provided the underlying debts are discharged as a matter of their governing law, and (per the Explanatory Statement) provided the Cayman Scheme is recognised as a matter of New York law (see Cheng -1 at [106]).

84. The BVI applies the rule in *Gibbs*, under which a debt is discharged if (but only if) it is discharged under its proper law. Here that condition is satisfied. The Notes, though governed by New York law, are effectively discharged under that law once Chapter 15 relief is granted since the discharge effected by the Chapter 15 order is a discharge under the proper law for *Gibbs* purposes, and the BVI will recognise it accordingly.

85. As to the Hong Kong guarantors and the Convertible Note (which is governed by Hong Kong law), the parallel HK Scheme (the sanction of which is a condition of the Restructuring) will give effect to the compromise and the release of the Hong Kong Subsidiary Guarantors under Hong Kong law. Therefore, the Company had decided that there was no need to seek recognition of the HK Scheme under Chapter 15.

86. As the Company submitted, the international-effectiveness question is primarily a matter for sanction. At the convening stage it was sufficient that there was no obvious roadblock (see *Re ColourOz Investment 2 LLC* [2020] BCC 926 at [57]) and I accepted that in this case there was none.

87. As regards the impact of the applicable sanctions, the Company accepted that the Court would wish to be satisfied that the Scheme can be performed without breaching them so that there would be no blot on the Scheme by reason of illegality. As the discussion of sanctions set out above makes clear, I was satisfied that in this case (in light in particular of Mr Haines' evidence) there was no illegality risk or issue. The cancellation and mark-down of the Notes was not prohibited, because no cancellation or mark-down will be effected in respect of NSD-held Notes until sanctions permit; a global corporate

action such as the Scheme is not a transaction with or for the benefit of the NSD, and no funds, goods or services flow to the NSD (see Haines - 1 at [60]-[71]). The issuance of the Scheme Consideration was not prohibited, because the Blocked Scheme Creditors' consideration was held in escrow with legal and beneficial title retained by the Company and they will have no interest save a right to receive the consideration once no longer restricted (no funds or economic resources are thereby made available, directly or indirectly, to or for the benefit of a designated person, and the transferable-securities and investment prohibitions are not engaged because the purpose of the Scheme is to restructure the Company's debt, not to make funds available to a person connected with Russia (see Haines – 1 at [72] - [79])). In addition, two structural safeguards reinforce the position. The Scheme provides expressly that nothing in it requires or authorises any person to act in breach of the applicable sanctions and it confers a power on the Company to modify the Scheme to ensure that it is not contrary to the applicable sanctions.

88. I also accepted, subject to hearing further argument if the point was challenged and raised at the Sanction Hearing and recognising that the point is not straightforward, the Company's submission that the escrow account arrangements did not involve the enforcement of a foreign criminal or penal law. This question involves a slightly different analysis from the question of whether prohibiting Blocked Scheme Creditors from voting represents an enforcement and is not permitted by reason of the exclusionary rule. In the case of voting, as noted above, the context is the Court's determination of the appropriate procedure to be adopted at a scheme meeting whose procedural rules the Court has the power to determine. In the case of the escrow arrangements, the context is the nature and vesting of the Blocked Scheme Creditors' rights to their Scheme Consideration and when they are to receive those rights. However, in both cases the applicable US sanctions are being taken into account to determine the proper voting procedures and when Blocked Scheme Creditors are to be entitled to receive their Scheme Consideration (and how it is to be held in the meantime). But in neither case are the US sanctions being enforced by or for the benefit of the relevant US authorities. Instead, the Scheme's procedures and terms have been structured so as to be capable of being implemented and given effect without causing a breach of the US sanctions. The focus is on giving effect, and the purpose of these arrangements is to give effect to, the Scheme.

89. I also accepted the Company's submission that the exclusion from the Scheme of the payables including long outstanding professional fees owed in relation to the previous failed restructurings and the shareholder loans owed to the Chairman did not prevent the Scheme being sanctioned. The exclusions, which were fully disclosed to Scheme Creditors, appeared to be made for *bona fide* sound and appropriate commercial reasons and did not result in unfairness to Scheme Creditors. As the Company pointed out, there is no requirement to include all scheme creditors within a putative class (here, unsecured creditors) provided that the exclusion of those creditors is in good faith and for sound commercial reasons (see *Sea Assets Ltd. v. Perusahaan Perseroan (Persero) PT Perusahaan Penerbangan Garuda Indonesia* [2001] EWCA Civ 1696). If a dissenting Scheme Creditor wished to object to the equitisation under the Scheme in circumstances in which the shareholder loans are impaired, but not entirely released, that could be considered at the sanction hearing.

90. I also accepted that the retention of equity by the current shareholders was to be analysed and assessed in a similar manner. There is no absolute priority rule that applies to schemes (which would prohibit shareholders receiving any value or benefits under the scheme if creditors were not paid in full) and since the matter had been fully disclosed to Scheme Creditors it would be for them to decide whether to vote in favour of the Scheme on these terms.

91. Finally, I accepted the Company's submissions that the terms of the Releases were unobjectionable (see for a summary of the applicable law on releases [87] - [91] in my Hong Kong judgment in *Powerlong*).

**The Sanction Order**

*The post Convening Order events*

92. The Company's evidence regarding events following the Convening Order including the conduct of the Scheme Meeting was set out in the First Affidavit of Ms Ainsley Watt, who is a Director at Alvarez & Marsal (***A&M***) and was the Chairperson at the Scheme Meeting, the Second Affirmation of Cheng Li-Lan and the Second Affirmation of Chik Ho Yin Henry.

93. The Scheme Meeting Notice and the Explanatory Statement (with the Scheme at Appendix 4 and the Solicitation Packet, including the Account Holder Letter, the CB Holder Voting Form and the Blocked Scheme Creditor Intention Letter, at Appendix 8) were despatched on 21 July 2026 by each of the channels required by paragraph 7 of the Convening Order. Despatch on 21 July 2026 gave 37 days' notice of the Scheme Meeting on 27 August 2026, against the 35 days required by paragraph 7.

94. The Information Agent sent reminder emails on 6, 19 and 21 August 2026, and targeted reminders to the largest Account Holders among RSA parties on 12, 18 and 20 August 2026. Beyond what the Convening Order required, the Company made available on its website and the Transaction Website all documents referred to in [8] of the Explanatory Statement and all documents filed in the HK Scheme proceedings.

95. The Information Agent verified each Account Holder Letter. Of 83 letters found to be defective or unverifiable, 72 were cured with the Information Agent's assistance. Most of the remainder were duplicates and only two could not be completed because the Scheme Creditor or Account Holder did not respond. Three Scheme Creditors who had submitted Account Holder Letters before the filing deadline submitted updated letters after it, two to cure defects and one to appoint the Chairperson as proxy rather than attend. The Information Agent reported the updates and the reasons for them to the Chairperson, who exercised her discretion to accept all three. That discretion was conferred by [17] of the Convening Order and by Clause 1.3 of the Solicitation Packet.

96. The CB Holder submitted its CB Holder Voting Form to the Company before the Voting Instruction Deadline. The Company verified its identity, status and holding, and the Information Agent, working with the Company and A&M, converted its Voting Scheme Claim from Hong Kong dollars into US dollars at the Bloomberg USD/HKD spot rate at the Record Time. The CB Holder appointed the Chairperson as its proxy. The Notes Trustee and the Depositary confirmed in writing that they would not, and did not, vote at the Scheme Meeting.

97. The Scheme Meeting was held on 27 August 2026 at the offices of Maples and Calder in George Town. It commenced at approximately 8.30 a.m. Cayman time (9.30 p.m.

Hong Kong time), after the HK Scheme Meeting at 9.00 p.m. Hong Kong time, was formally opened at 8.49 a.m. and closed at 9.19 a.m. A Zoom facility was hosted by A&M, which had provided instructions on 26 August 2026 to the Information Agent for Scheme Creditors wishing to attend, and to the Company for Blocked Scheme Creditors wishing to observe.

98. One Scheme Creditor attended by its proxy, Mr Li, from the offices of Skadden in Hong Kong, his identity and the creditor's entitlement to vote having been verified by the Information Agent before he was admitted. No other Scheme Creditor attended, and no Blocked Scheme Creditor observed, by video conference or in person. There were no technical difficulties. The Scheme Meeting was quorate, one Scheme Creditor having appointed Mr Li and 373 Scheme Creditors, including the CB Holder, having appointed the Chairperson as proxy. At the Scheme Meeting the Chairperson recorded that Blocked Scheme Creditors were unable to vote, had been given the opportunity to express their views by Blocked Scheme Creditor Intention Letter for the Chairperson to relay to the meeting, and that the Company had informed her that no such letter had been received. Scheme Creditors were twice invited to ask questions or express opinions, but none did.

99. At the Scheme Meeting the votes in favour comprised 356 Scheme Creditors voting through the Chairperson (US$608,484,279) and one voting through Mr Li (US$39,050,912). The 17 votes against were all cast through the Chairperson. The Information Agent has confirmed that the CB Holder was among those who appointed the Chairperson as proxy and that it instructed her to vote in favour of the Scheme. The Scheme was therefore approved by a majority in number representing more than 75% in value of the Scheme Creditors present and voting.

*The Court's approach and the issues to be considered at the Sanction Hearing*

100. In *E-House 1* at [106] I summarised the issues on a sanction application as follows:

> *(a). first, that the Company has complied with the terms of the Convening Order … in convening the Scheme meeting and that the requisite statutory majorities under section 86(2) of the Companies Act were achieved at the Scheme meeting (**Issue One**).*

> *(b). secondly, that the class of Scheme Creditors was fairly and adequately represented by those who attended the Scheme meeting and that the statutory majorities were acting bona fide and not coercing the minority in order to promote interests adverse to those of the class whom they purported to represent (**Issue Two**).*
>
> *(c). thirdly, that the Scheme is a scheme of arrangement that is fair, in the sense that an intelligent and honest person, being a member of the class concerned and acting in respect of his/her interest, might reasonably approve of it and that, as a matter of its residual discretion, the Court should sanction the Scheme (**Issue Three**).*
>
> *(d). fourthly, that there is no other blot or defect in the Scheme which would warrant the Court refusing to sanction the Scheme (**Issue Four**).*
>
> *(e). fifthly, in the case of a scheme with an international element, that the Court will not be acting in vain if it sanctions the Scheme. This requires consideration of whether the scheme will be recognised and given effect in other relevant jurisdictions. This was, as I have noted above, addressed in a preliminary way without the benefit of the results of the Scheme Meeting, at the convening hearing but needs to be reviewed again at the sanction stage (**Issue Five**).*

101. The Company noted that my formulation mirrored the English approach (see *Re Telewest Communications plc (No 2)* [2005] BCC 36 at [20] - [22]). The approach of the Court is to see that the requirements of the Companies Act have been complied with; that the class of Scheme Creditors was fairly represented and that the majority acted *bona fide*; and that the arrangement is one an intelligent and honest member of the class, acting in his own interest, might reasonably approve. The Court does not sit merely to register the decision of the meeting, but in commercial matters creditors are better judges of their own interests than the Court, and the Court will be slow to differ from the meeting unless the class was not properly consulted, or did not consider the matter in the interests of the class, or some blot is found. The English Court of Appeal in *Re AGPS Bondco plc* [2024] Bus LR 745 at [122] - [128] had put the point well and in this way: the question whether it is fair to impose a scheme on a dissenting minority is answered by a limited rationality test applied to the majority vote, and almost invariably that question is answered by the very fact of the vote in favour; the greater the majority, the greater the Court's confidence that the scheme is in the interests of the class. In this Court, Smellie CJ described the role of the Court at sanction as a limited one, the task being not to pass its own judgment on the merits: *Re SPhinX Group of Companies* [2014] (2) CILR 152 at [3]. The same approach had been applied recently by Justice

Doyle in two comparable PRC property-group schemes: *Re China Aoyuan Group Ltd*, FSD 284 of 2023, sanction judgment of 12 December 2023 and *Re Logan Group Company Ltd* FSD 127 of 2026, sanction judgment of 10 August 2026.

*Issue One: compliance with the Convening Order, and the statutory majorities*

102. I accepted that the Company had complied with the Convening Order in every respect. The statutory majorities were achieved with a very high level of support. The votes in favour were 95.5% by number and 97.8% by value.

103. I also accepted that the Scheme Creditors were properly constituted as a single class. As I have noted above, the issue of classes had been fully argued at the Convening Hearing. No Scheme Creditor had raised a class point at the Convening Hearing and none had done so since. As the Company pointed out, where class composition had been the subject of full argument at the convening hearing and no creditor had come forward to contend otherwise, it was not ordinarily appropriate to revisit the point at sanction of the Court's own motion (see *Re Global Garden Products Italy SpA* [2017] BCC 637 at [43], per Snowden J, as he then was). I accepted that there was no need to revisit or question the classes analysis I had adopted at the Convening Hearing (I noted that the CB Holder had voted in favour of the Scheme and therefore of the treatment of its claim to default interest), subject to one issue.

104. One further point did however arise, as I have noted above. At the Sanction Hearing I pointed out to Mr Al-Attar that it seemed to me that in fact the Instruction Fee had not been offered to all Scheme Creditors and that there was a difference in treatment as between the Blocked Scheme Creditors and other Scheme Creditors. This was because the Blocked Scheme Creditors were not entitled to receive the Instruction Fee because that was only payable to a Scheme Creditor who voted in favour of the Scheme, which Blocked Scheme Creditors would never be able to do. However, Mr Al-Attar submitted that in the absence of any Blocked Scheme Creditor wishing and seeking to accede to the RSA or objecting , this was not a material issue that should affect or prevent sanction. Had a Blocked Scheme Creditor come forward and sought to become a party to the RSA (or complained), it would have been possible to ensure equality of treatment by amending the RSA to allow Blocked Scheme Creditors to be entitled to the

Instruction Fee with the relevant shares allocated to Blocked Scheme Creditors being held in escrow until the applicable sanctions had ceased to apply to them. In any event, Mr Al-Attar said, since the shares to be issued by way of the Instruction Fee were only of a speculative value – hope value was the term used by Mr Al-Attar – the difference in entitlements and rights under the Scheme were not material. I accepted these submissions although I noted that the issue would have required careful consideration had any Blocked Scheme Creditors come forward and objected.

105. At the Sanction Hearing Mr Al-Attar drew to my attention the fact that the sanction hearing before Mr Justice Hildyard in the *Schleich* scheme had recently taken place (in which he had also appeared) with judgment yet to be handed down. Mr Justice Hildyard had heard submissions on the scope and impact on schemes affecting sanctioned creditors of the exclusionary rule (similar to those made by Mr Al-Attar to me) and had been satisfied that the rule did not prevent the Court from sanctioning a scheme, such as the *Schleich* scheme, under which the scheme consideration to be given to sanctioned scheme creditors would be transferred to and held in a holding trust until the sanctions ceased to apply.

106. I note that after the Sanction Hearing Mr Justice Hildyard did hand down his judgment confirming his reasons for sanctioning the *Schleich* scheme ([2026] EWHC 2735) and set out his conclusions on the exclusionary rule as follows (my underlining):

> *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 provide 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.*

107. As can be seen, Mr Justice Hildyard focussed, in deciding whether the holding trust in the *Schleich* scheme constituted an enforcement of US sanctions, on its purpose (I note that *E House 1* was apparently not cited to him although I accept that this case focussed on voting not escrow or holding trust arrangements). Was it targeted as a means of (or for) enforcing sanctions or merely part of the (usual and ancillary) mechanics adopted and needed in order to ensure that the scheme company discharged its obligation to issue the scheme consideration to all scheme creditors, taking into account restrictions to which particular scheme creditors were subject?

108. The approach I had adopted at the Convening Hearing, also based on submissions by Mr Al-Attar, is, I think, consistent with Mr Justice Hildyard's approach. As I noted above, I do not find this to be an entirely straightforward issue and can see that it may require revisiting in a case where there is opposition and full argument and citation of authority. Having said that, the approach which Mr Al-Attar advocated for, and which Mr Justice Hildyard and I have accepted, seems to me to be the right one from the perspective both from of pragmatism (as recognised by Hildyard J) and principle. A company's actions in structuring a scheme of arrangement to avoid the risk of a breach of US sanctions may have the result of indirectly avoiding designated persons acting in a prohibited manner but the company is not seeking to enforce, or involved in the enforcement, of the US authorities' sanctions.

*Issue Two: fair representation, and the bona fides of the majority*

109. I accepted the Company's submissions that the requirements of Issue 2 had been satisfied:

(a). the class was fairly and adequately represented, and there was nothing to suggest that the majority acted otherwise than in good faith or sought to coerce the minority.

(b). 374 Scheme Creditors voted, holding Voting Scheme Claims of US$662,101,417, representing approximately 73% by value of the aggregate Voting Scheme Claims of all Scheme Creditors.

(c). 295 Scheme Creditors holding 67.03% of the principal of the Notes were Scheme Creditors who had acceded to the RSA. Accordingly, Scheme Creditors who had not acceded to the RSA, and who would receive no Instruction Fee, participated in the vote, and the 97.8% majority by value cannot be accounted for by RSA parties alone.

(d). both series of Notes were represented, and the CB Holder voted in favour.

(e). the 17 Scheme Creditors who voted against hold US$14,566,226, or 2.2% by value. None had communicated any reason to the Company, none had raised any question at the meeting, and none had given notice of an intention to appear.

(f). there was no evidence that any Scheme Creditor had voted otherwise than in its own interest as a creditor, or that the majority had any interest adverse to the class.

(g). as regards the Blocked Scheme Creditors, each one had been summonsed and given a means of being heard but no Blocked Scheme Creditor Intention Letter had been received and no Blocked Scheme Creditor observed the Scheme Meeting, or contacted the Company about the Restructuring at any time since the Practice Statement Letter. Their exclusion could not have affected the result since the Blocked Scheme Creditors were estimated to hold at least 3.37% of the Notes. If the Blocked Scheme Creditors had been admitted to vote and had voted against, the majority in favour by value would have remained in the region of 94%.

*Issue Three: the intelligent and honest creditor, and the Court's discretion*

110. I also accepted the Company's submission that the Scheme was one that an intelligent and honest Scheme Creditor, acting in respect of its own interest, might reasonably approve:

(a). the starting point was the vote. A majority of 97.8% by value and 95.5% by number, on a substantial turnout and across the whole body of Scheme Creditors, was strong evidence of that proposition (see *AGPS* at [122] - [128]). The comparator confirmed it. In *E-House No1* at [113] I had applied the test by reference to the comparator and the evidence that the scheme would produce a considerably better recovery than a liquidation. The same was true here. Further and importantly, no Scheme Creditor had adduced evidence to the contrary.

(b). as Mr Al-Attar noted at the Sanction Hearing, in view of the very low projected recoveries in a liquidation, it was rational and reasonable to support the Scheme because it represented hope value. Scheme Creditors stood a chance of making material recoveries if the Restructuring was implemented which realistically could be expected to be in excess of the likely low recoveries in a liquidation. Mr Al-Attar accepted that the methodology used by Kroll to estimate the value of the new equity was unconventional and of limited reliability ("*only a slightly more rigorous expression of hope value*") but it was, he said, a genuine attempt to provide a fair and reasoned guide to value in difficult circumstances (where there were no projected cashflows that would support a more conventional DCF valuation).

(c). for the reasons given above, I was satisfied that the treatment of the Blocked Scheme Creditors was fair.

(d). for the reasons also given above, I was satisfied that the Company's agreement to pay the Instruction Fee was fair and that there could be no objection to the treatment of Default Interest (as already noted, the CB Holder had voted in favour of the Scheme).

(e). I was satisfied that the retention of equity by the existing shareholders was in the circumstances fair. Such a retention, in particular retention by a controlling shareholder who continued to support the company, had been accepted as fair in comparable restructurings where it served the interests of the creditors as new shareholders (see *Re Sino-Ocean Group Holding Ltd* [2026] 1 BCLC 318 at [10], [120], [127] - [128]). In the present case, the Chairman has undertaken to fund the costs of implementing the Restructuring if the Company could not do so, and he and the entities he controls had undertaken not to enforce payment of their loans for three years from the Restructuring Effective Date nor demand payment until the Company's liquidity has recovered.

(f). the exclusion of the professional fees and the Chairman's loans from the Scheme had been done in good faith and for sound commercial reasons. The fees must be paid for the Restructuring to be implemented and the business to continue; the loans had supported the business and were impaired by deed rather than released. The Scheme Creditors had voted in favour of the Scheme on these terms which had been fully disclosed.

*Issue Four: no blot or defect*

111. I was also satisfied that there was no blot on the Scheme. The release of the Subsidiary Guarantors was unobjectionable, as noted above; the releases of directors, advisers and agents were also unobjectionable also for the reasons noted above; the Scheme was capable of being performed without breach of the applicable sanctions; the escrow architecture, including the Perpetuity Period, was unobjectionable; the modification and consent rights contained in clause 18 of the Scheme (which conferred the customary power to modify the Scheme with the Court's approval) were unobjectionable and the lapse mechanism, under which the Scheme lapses if the Restructuring Effective Date does not occur by the Longstop Date (including any extension thereof) was also unobjectionable.

*Issue Five: the Court will not act in vain*

112. The analysis of international effectiveness carried out at the Convening Hearing did not require any updating or adjustment and showed that the Court could conclude that the Scheme was likely to be effective in all relevant jurisdictions.

113. Further, the Company's updated evidence as to progress in satisfying the Restructuring Conditions confirmed that most of them had already been satisfied. The Company accepted that this was an important issue given the history of the failed 2022 and 2023 Schemes. Consistently with what I had said in *Powerlong* regarding the need for specific rather than general evidence about the satisfaction of restructuring conditions, the Company's evidence set out the state of play in relation to each of the Restructuring Conditions.

114. In contrast with the earlier schemes (the 2022 Scheme had lapsed for want of cash and the 2023 Scheme had lapsed because a third party declined to release a guarantee and an underwriter withdrew) none of the outstanding conditions involved any cash payment by the Company, any rights issue or underwriting, any transfer of assets, or any consent from a third party outside the Restructuring. The residual dependencies were the orders of this Court and the US Bankruptcy Court. The Hong Kong Court and the SEHK had already given their approvals.

115. I was satisfied that it was likely on the evidence that the Restructuring Conditions would be satisfied before the Longstop Date (which could if necessary be extended).

**Terms in the Sanction Order**

116. I would note that importantly, particularly in light of the unsatisfactory history of the earlier schemes, the Sanction Order contained the following recitals and orders:

> *AND UPON the Company undertaking to the Court that if the Company concludes that it is likely that any of the Restructuring Conditions in Clause 6.1 of the Scheme will not be satisfied on or before the Longstop Date, it will promptly apply to the Court for directions*
>
> *The Court shall retain jurisdiction in relation to the implementation and coming into force and effect of the Scheme (and for the purpose of giving directions under the Scheme in accordance with Clause 20.1 thereof) despite and after the making of this Order and delivery of this Order to the Registrar of Companies.*



**The Hon Justice Segal**

**Judge of the Grand Court, Cayman Islands**

**17 November 2026**