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Case No: **CR-2024-005890**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES LIST (ChD)

7 Rolls Building
Fetter Lane; London,
EC4A 1NL

11 November 2024

Before:

THE HONOURABLE MR JUSTICE THOMPSELL

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IN THE MATTER OF SINO-OCEAN GROUP HOLDING LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006

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Mr Tom Smith KC, Mr Ryan Perkins and Ms Annabelle Wang (instructed by **Sidley Austin LLP**) for the **Plan Company**
Mr David Allison KC (instructed **Allen Overy Shearman LLP**) for the Co-ordination Committee of creditors of the Plan Company
Mr Mark Arnold KC (instructed by **Linklaters LLP**) for **Long Corridor Asset Management Limited**

Hearing date: 18 October 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 11 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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Mr Justice Thompsell:

1. INTRODUCTION AND BACKGROUND

1. This judgment relates to a hearing on 18 October 2024, being this convening hearing in relation to a proposed restructuring plan (the "**Plan**") under Part 26A of the Companies Act 2006 ("**CA 2006**"). The Plan relates to Sino-Ocean Group Holding Limited (the "**Plan Company**"). The Plan Company seeks permission to convene meetings for different classes of its creditors (the "**Plan Creditors**") (labelled Classes A to D respectfully) to consider and, if thought fit, approve the Plan. A second hearing will relate to the court's sanction of the Plan.

2. The Plan Company is incorporated in Hong Kong, and its shares are listed on the Hong Kong Stock Exchange. The Plan Company is the ultimate holding company of a property development group (the "**Group**") whose underlying assets are located primarily in the People's Republic of China. The Group has operated on a very large scale: the Group's audited annual report for the year ended 31 December 2023 stated that the Group's assets had a book value of about US$30 billion. However, it is the Plan Company's position that the realisable value of the Group's assets may now be less and certainly would be far less if sold in the context of formal insolvency proceedings. It is common knowledge that the PRC property market is currently in a state of turmoil. Many market participants are experiencing severe financial distress, and developers such as China Evergrande have already collapsed into formal insolvency proceedings.

3. The Plan Company has defaulted on its debt and faces enforcement action by numerous groups of financial creditors. As an example, a winding-up petition was presented against the Plan Company in Hong Kong on 27 June 2024 in respect of an undisputed debt exceeding US$13 million. The petition has been adjourned twice to allow the Plan Company to promulgate the Plan and for its subsidiary, Sino-Ocean Land (Hong Kong) Limited, to promulgate a Hong Kong scheme of arrangement. At least two winding up petitions have also been presented against different subsidiaries of the Plan Company.

4. If the Plan fails then, the Plan Company argues, it is inevitable that the Plan Company (and many other Group companies) will enter into formal insolvency proceedings, triggering a liquidation of the Group's property portfolio at a highly inopportune time. The Plan is designed to prevent the destruction of value that would occur in the relevant alternative and to restore the Group to sustainable financial health.

5. The Plan constitutes one part of an overall cross-jurisdictional arrangement. The Plan Liabilities under the scope of the plan are governed by Hong Kong law (in the case of Class A) and English law (in the case of Classes B, C and D). To ensure that the compromise of the Class A debt is regarded as effective in Hong Kong, as well as in the United Kingdom, Sino-Ocean Land (Hong Kong) Limited has also proposed a parallel scheme of arrangement in Hong Kong (the "**Hong Kong Scheme**"). The Hong Kong Scheme relates only to the debt governed by Hong Kong law which is the same debt that forms Class A. The Plan and the Hong Kong Scheme are inter-conditional.

6. There is precedent for such an arrangement. The promulgation of parallel schemes/plans in England and Hong Kong was approved in similar circumstances by Sir Alastair Norris (sitting as a High Court Judge) in *Re Hong Kong Airlines Ltd* [2023] BCC 477, following a line of previous authorities of a similar nature.

7. It is intended that the Plan will achieve its objective by restructuring the four key classes of the Group's unsecured financial indebtedness (labelled "Class A" to "Class D") and providing for the release of those liabilities in return for the issue of a package of new secured debt instruments and convertible securities termed the "Plan Consideration". The Plan Consideration falls into two basic categories:

   i) New debt claims in the form of either a new loan obligation (relevant to the proposed Class A creditors), or new notes. The new loan notes are relevant for the other proposed classes of creditor, and are an option offered to the proposed Class A creditors as an alternative to the proposed new loan obligations. It is understood that the commercial terms of the new loan obligations and of the new loan notes are broadly equivalent, so that the difference between them is principally one of form.

   ii) New securities in the form of either new mandatory convertible bonds (which convert on a mandatory basis into shares in the Plan Company 24 months after issuance or upon an event of default) or new Perpetual Securities which appear to be the equivalent of a type of preference share, though ranking as debt rather than share capital.

8. The Plan proposes the issuance of these different types of Plan Consideration in different proportions in respect of different classes, and in some cases with some elections being available to members of particular classes between these different types of security.

9. For this purpose the Plan Company has categorised the Plan Creditors into four classes, Classes A to D, reflecting among other things, the different rights that the Plan Company proposes to offer for these different classes of creditor, if the Plan succeeds. This in turn has been influenced by the Company's assessment of what each of these classes of creditor would be likely to receive in the event of the Company entering into formal liquidation proceedings which, the Plan Company considers, will trigger severe distress worldwide across the Group, including a combination of enforcements, insolvency filings and distressed sales. The Company argues that this is the "**Relevant Alternative**" against which the Plan should be judged.

10. The Plan Company has determined the different classes, and the differing offers made to the different classes by reference to outcomes predicted by what is being referred to as the "**Plan Outcomes Memorandum**". This is based on the expert report of Ms Lisa Rickelton of FTI (the "**FTI Report**") and an internal memorandum, prepared by FTI. These documents both originally contained certain calculation errors. The calculation errors were subsequently corrected and the report was re-signed. The court has the amended versions.

11. The different classes are proposed, notwithstanding that all the loans and loan notes were unsecured and notwithstanding that all except the loan notes to be dealt with in Class D were unsubordinated, because the loans made by the Class A lenders and the holders of various issues of notes had differing prospects of being able to recover amounts from the assets of different companies within the Group in a liquidation scenario. The FTI Report had sought to assess the different levels of return creditors would be likely to receive in the event that the Plan was not approved and the Company and members of its group went into insolvency. On the basis of this assessment, the Plan Company designed the different classes with a view to ensuring what would be, in its view, a fair result so that the value that each of the different categories of the holders of loan notes would obtain from the Plan would have a similar relationship to the return that each category would be expected to receive in the event of insolvency.

12. Whilst they are otherwise unaffected by the Plan and the Hong Kong Scheme, the effect of issuing the new securities will dilute the shareholding interests of existing shareholders, although it is likely that this would be more than compensated by the increasing value of the shares of the Plan Company that successful implementation of the Plan and the Hong Kong Scheme would be likely to engender. The existing shareholders have not been constituted as a proposed class either for the Plan in the United Kingdom or for the Scheme in Hong Kong. This has not thought to have been necessary by the Plan Company as it is confident that they are supportive of these proposals and will vote in favour of what shareholder resolutions are necessary for the Plan and the Hong Kong Scheme to be brought into effect.

13. The Plan is supported in its entirety by one group of creditors who are banks. This group of creditors have formed a Coordination Committee, referred to as "**CoCom**". They have been represented at the hearing by Mr David Allison KC.

14. Another group of creditors, who style themselves the "Ad Hoc Group" have certain reservations in relation to some elements of the Plan. One of their number, Long Corridor Asset Management Limited ("**Long Corridor"**), which holds various notes and capital securities that it is proposed will be compromised under the Plan, was represented at the hearing by Mr Mark Arnold KC.

15. Long Corridor appreciates that the court at this hearing is concerned with matters relating to jurisdiction and to the composition of classes for the purposes of the Convening Hearing, and not with matters relating to the merits and fairness of the Plan. Accordingly, whilst recording that it does have concerns as to the merits and fairness of the Plan, and understands them to be shared by other members of the Ad Hoc Group, it has not advanced those concerns on this occasion and instead reserves its right to raise objections to the Plan, and/or to make an application to the court should the court be asked to exercise its cram down power under s. 901G CA 2006 at a later stage.

16. For the purposes of this hearing Long Corridor wished to air its objections (which it understands to be shared by other members of the Ad Hoc Group) to

the classes of creditor proposed by the Plan Company. I will discuss these below after considering the jurisdictional issues.

2. JURISDICTIONAL ISSUES

17. S.901A CA 2006 introduces Part 26A as follows:

> " (1) The provisions of this Part apply where conditions A and B are met in relation to a company.
>
> (2) Condition A is that the company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.
>
> (3) Condition B is that—
>
> (a) a compromise or arrangement is proposed between the company and—
>
> (i) its creditors, or any class of them, or
>
> (ii) its members, or any class of them, and
>
> (b) the purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the financial difficulties mentioned in subsection (2)."

18. The first requirement is that we should be dealing with a "company". This is defined in s.901(4) to include:

> "any company liable to be wound up under the Insolvency Act 1986".

19. Within the terminology in the Insolvency Act 1986 ("**IA 1986**"), the Plan Company would be regarded as an "unregistered company", as it is not registered as a company anywhere in the United Kingdom. S. 221 IA 1986 provides for the winding up of unregistered companies.

20. *Real Estate Development Co* [1991] BCLC 210 established a three-part test for winding up a foreign company; (1) that it should have sufficient connection with the United Kingdom; (2) that there was a reasonable prospect of a benefit from the winding up; and (3) that there were one or more persons involved over which the court could exercise jurisdiction. However in another case, *In re Drax Holdings* [2004]1WLR (at[26]), Lawrence Collins J held that these tests are not conditions as such: they are matters that go to the discretion of the court. As a result, the definition of "company" in s.901(4) "*any company*" effectively means any organisation that qualifies as a "*company*" under IA 1986 and is not effectively reduced in scope by the further words "*liable to be wound up under the Insolvency Act 1986*". This interpretation has been widely followed by the courts, for example by Briggs J in *In Re Rodenstock GmbH* [2011] EWHC 1104 (Ch); [2011] Bus. L.R. 1245; [2012] B.C.C. 459 at [56], and by Snowden J (as

he then was) in *Re Noble Group Ltd* in [2018] EWHC 2911 (Ch) [2018] EWHC 3092 (Ch); [2019] B.C.C. 349 at [68]. It is not disputed that the Plan Company is a "company" for the purposes of s.901(4) and I accept that it is.

21. I accept also that the Plan would be regarded as an "arrangement" under s.901A CA 2006.

22. Moving to the first formal condition, Condition A, I am satisfied that the Plan Company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern. This is apparent from the witness statement of Mr Sum Ying Pui; from the terms on which its auditors refused to provide an audit opinion in relation to its most recent accounts; and from the fact that it has faced a winding up petition that it has not been able to discharge.

23. Moving to Condition B, it is apparent that this condition is met from the description of the circumstances I have already given.

24. As well as considering the jurisdictional conditions under s.901A CA 2006, before convening the proposed meetings the court needs to consider two further matters in accordance with paragraph 6 of the Practice Statement (Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006) [2020] 1WLR 4493 (the "**Practice Statement**"):

    i) whether it is appropriate for the Plan Creditors to vote, as is proposed by the Plan Company, in four separate class meetings (the "**Plan Meetings**"); and

    ii) whether there are any other reasons that stand in the way of convening the Plan Meetings.

25. Before turning to the merits of the arguments regarding class composition it is helpful to outline the legal principles involved.

3. THE PRINCIPLES RELATING TO CLASS COMPOSITION

26. It was agreed on all sides that the principles for determining whether creditors should be separated into more than one class were those set out by Trower J in *Re Virgin Atlantic Airways Ltd* [2020] BCC 997 at [41]-[48]("***Virgin Atlantic***") and Snowden J (as he then was) in *Re Virgin Active Holdings Limited* [2021] EWHC 814 (Ch) ("***Virgin Active***") at [61]-[69], each endorsed by the Court of Appeal in *Re AGPS Bondco Plc* [2024] BCC 302, per Snowden LJ at [112].

27. Long Corridor argues that it is appropriate to highlight the following:

    i) The basic principle is that a class must be confined to those persons whose rights against the company are not so dissimilar as to make it *impossible* for them to consult together with a view to their common interest.

    ii) The court adopts a broad approach to that question on the facts of each case: differences in rights may be material, certainly more than de

minimis, without leading to separate classes. The dissimilarity must be such as to make it impossible to consult together, not merely difficult: is there more to unite than to divide them?

iii) Whilst it is necessary to take care in a Part 26 scheme about placing creditors into the same class when they have materially different rights, it may be equally necessary in relation to a Part 26A plan to take care not to place creditors into an artificially large number of classes in order to provide a basis for invoking the cram down power under s.901G CA 2006: by doing so, a company may improve the prospect that at least one class votes to approve it: see *Re Virgin Active* per Snowden J at [62] and *Re Virgin Atlantic* per Snowden J at [47].

28. The Plan Company, however, emphasises another point. This is that, in judging what are "materially different rights", there are two aspects that each needed to be considered. First, the court needs to consider the similarities of what different categories of creditor would be giving up if the restructuring plan went ahead, in terms of their rights against the company proposing the plan. This is sometimes termed as "**rights in**" - i.e. the rights that the creditors are giving up and in that sense are putting into the plan or scheme. Secondly, the court needs to consider what is proposed that different categories of creditor would receive under the restructuring plan. This is sometimes termed as "**rights out**" - i.e. the rights that the creditors are receiving out of the plan or scheme.

29. This proposition derives from the decision in *Re Hawk Insurance Co Ltd* [2002] BCC 300. At [23] Chadwick LJ poses (before considering relevant authorities):

> "23. As I have indicated, I would have regarded it as self-evident, in the absence of authority, that the relevant question at the outset is: between whom is it proposed that a compromise or arrangement is to be made? Are the rights of those who are to be affected by the scheme proposed such that the scheme can be seen as a single arrangement; or ought the scheme to be regarded, on a true analysis, as a number of linked arrangements? The question may be easy to state; but, as the cases show, it is not always easy to answer."

30. At [30] he explains the approach to be taken:

> "… in the context of the question 'with whom is the compromise or arrangement made'. In each case the answer to that question will depend upon analysis (i) of the rights which are to be released or varied under the scheme and (ii) of the new rights (if any) which the scheme gives, by way of compromise or arrangement, to those whose rights are to be released or varied. It is in the light of that analysis that the test formulated by Bowen LJ in order to determine which creditors fall into a separate class - that is to say, 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' - has to be applied."

4. THE PROPOSED CLASSES

31. With these principles in mind, I turn to consideration of whether there are any sustainable objections to the classes proposed by the Plan Company.

32. I have considered, and dismissed, two potential objections that might be made to the proposed classes that were not put forward by Long Corridor, but nevertheless, merit some thought.

(i) Absence of a Shareholder Class

33. First, it may be asked why the shareholders of the Plan Company, who are affected by these arrangements, are not parties. I have already explained above why the Plan Company does not consider this to be necessary. I note that under paragraph 2 of the Practice Statement, it is the responsibility of the applicant (in this case the Plan Company) to determine whether more than one meeting of creditors and/or members is required by a Plan and if so to ensure that those meetings are properly constituted. If the Plan Company has decided that it does not need to bind its shareholders into the Plan, I do not think it is for the court to decide that they should be so bound, unless their not being so bound poses a threat to the viability of the Plan. In this case I am content to follow the Plan Company's assessment that it does not.

(ii) Comparisons etc. to some Creditors

34. Secondly, it has been drawn to my attention that that some of but not all, the creditors are parties to a Restructuring Support Agreement ("**RSA**") under which they may obtain commissions and other payments.

35. These include consent fees (for agreeing to support the restructuring) payable in cash on the effective date of the restructuring. These fees are calculated as a percentage of the Plan Liabilities held by the relevant creditor. The applicable percentage rate is 0.05% or 0.1% for scheme creditors who joined earlier. Mr Smith argued that this may be ignored as it is *de minimis* and has been made available to all creditors potentially affected by the Plan. I was referred to in *Re PGS ASA* [2020] EWHC 3622 (Ch) at [53], where Miles J held that a fee of 0.25% did not fracture the class.

36. The members of CoCom are also entitled under the RSA to receive a work fee up to a maximum of 0.5% to reflect the effort in the negotiating the restructuring. Half of this is payable regardless of whether the Plan is sanctioned.

37. Again, I am given to understand that these types of work fees are common in high-value financial restructuring transactions. In *Re Haya Holdco 2 plc* [2022] EWHC 1079 (Ch) at [72(6)], Marcus Smith J helpfully summarised the authorities and explained why such fees do not fracture any class.

38. Finally, the Plan Company has agreed to pay certain professional adviser fees incurred by the members of the CoCom.

(iii) Objections raised by Long Corridor

39. Having regard to the level at which these various fees and payments are set, I agree that their existence does not fracture any of the classes. In reaching this conclusion, I note that no creditor has come forward with any objection to the proposed class composition on this basis; I am having regard to the precedents I have been referred to; and I am reflecting the fact that I see merit in not discouraging a practice that will make it more likely that restructuring plans will be developed.

40. Having put aside these potential objections to the proposed class composition, I need to deal with the particular considerations have been raised by Long Corridor.

41. First it has raised the concern as to why Class A exists as a part of the Plan, submitting that this seems unnecessary since the Class A creditors have no nexus with the United Kingdom and their debt can be dealt with under the Hong Kong Scheme.

42. Secondly, Long Corridor questions the need for creating different classes defined by reference to the holding of different instruments (or different series of notes), given that all classes of loans and notes are unsecured.

43. Putting these two points together, it is concerned that the Plan Company may be deliberately fracturing the vote of the holders of different classes of loan and of loan notes, with a view to obtaining the ability, if necessary, to overcome a failure to obtain the votes of any class by enabling the Court to exercise its cram down power under s.901G, CA 2006.

44. As regards this second point, in particular, Long Corridor argues that it has been unable to substantiate the rationale behind the Plan Company's selection of classe. This in part is partly because it only saw the underlying materials that were used to compile the FTI Report some two days before this hearing (despite having been in conversations with the Plan Company, and asking for this material, for months). In addition, Long Corridor believes there may be an opportunity to improve recoveries for creditors by mounting an action against shareholders, or certain shareholders, of the Plan Company. It distrusts the legal advice that the Plan Company has obtained in this matter and wishes to have more time to consider it.

45. The point regarding the inclusion of the Class A lenders within the Plan was developed in Long Corridor's skeleton argument but was not advanced during the convening hearing. Instead, Mr Arnold explained that Long Corridor's principal submissions were that it had not been given sufficient time to consider the facts and assumptions which underlay the class composition and therefore

sought as its primary case, an adjournment to give them proper time to do this or, as its secondary case an acknowledgement that it would be allowed to raise these points at the sanction hearing, notwithstanding that they are normally to be dealt with at the convening hearing.

46. Given what the court had already heard about the urgency of implementing the Plan, I was not attracted to the idea of an adjournment, and so I asked Mr Arnold to explain first, why he considered the class composition to be wrong and secondly what he considered might arise out of his client having a further opportunity to consider the information and assumptions behind the FTI Report.

47. As to the first point, Mr Arnold's argument was essentially that the interests of the members of the proposed Classes A to C were essentially similar. As regards rights in, they were all unsecured, and unsubordinated creditors and would rank *pari passu* if the Plan Company were to be wound up. In other words, their rights in, as against the Company are materially the same. He acknowledged that the proposed members of Class D held subordinated notes, and therefore it was appropriate that they should be regarded as a separate class, but as regards Classes A to C, there was no material difference as regards rights in.

48. As regards rights out, he argued that the similarities were greater than the differences between these classes. They were all receiving a mixture of different types of Plan Consideration that was intended to supply each of them with a similar multiple of value compared with what they were expected to receive in the Relevant Alternative. Whilst there were differences between what was being offered to each of these classes in the mix of security this was not an important enough difference so as to make it *impossible* for them to consult together with a view to their common interest. He argued therefore that, adopting a broad approach there would seem to be more to unite than divide those creditors who would otherwise fall into Classes A, B and C: fundamentally, each would have to consider the same question, namely whether to compromise its rights against the Plan Company in return for the package of new debt/notes entitlement, MCBs and NPSs offered under the Plan.

49. On the basis of the observations of Miles J in *Re Project Lietzenburger Strasse Holdco SARL* [2023] EWHC 2849 (Ch) at [31], endorsed by the Court of Appeal in *Re AGPS Bondco Plc* [2024] BCC 302 at [62], Long Corridor submitted that such issues should be addressed before a convening order is made even if that entails the adjournment of the convening hearing and the Court should proceed on that basis.

50. I did not accept this submission. As to the first point, it seemed to me that the differences between the different bundles of rights being offered to the different classes, including Classes A to C were materially different. In particular the mix of securities being offered (and the options as to the mix being offered) were significantly different for each Class. Whilst it may or may not be true that the value of the mix of securities being offered as rights out was substantially similar to the commercial value of what each Class was giving up as rights in,

that point was not sufficient to create a sufficient alignment or commonality of interests such that it would be possible for all classes to consult together with a view to their common interest. To provide a ridiculous, but telling example, if in a Scheme or Plan one class is being offered rights out in the form of gold sovereigns and another is being offered rights out in the form of tickets to a football match of the same value, the dissimilarity in the rights is sufficient to destroy any alignment of interests that they might otherwise have.

51. As to the second point, it follows that whatever the results of any due diligence by Long Corridor into the materials that were used to compile the FTI Report and the Plan Outcomes Memorandum, this would not change the fact that the different classes were being offered different things. It might result in a position whereby it would become apparent that one or another of the proposed classes *should* have been offered a different a different mix of securities, but that is a matter that goes to the *fairness* of the Plan, rather than to the correctness of the composition of the classes. This was not a reason to delay convening the class meetings. It is a matter to be considered at the sanction hearing.

52. I could see, therefore, no reason for questioning the Plan Company's proposal as regards class composition or for delaying convening the class meetings.

53. Turning to Long Corridor's alternative submission, that there should be some kind of order that they may continue to raise points concerning class composition at the sanction hearing, I see no need for any such order. Paragraph 10 of the Practice Statement, which provides:

> "While members and/or creditors will still be able to appear and raise objections based on an issue identified in para 6 above at the sanction hearing, the court will expect them to show good reason why they did not raise the issue at an earlier stage."

54. Paragraph 6 of the Practice Statement itemises the matters to be considered at the convening hearing and these matters, of course, include the composition of the classes.

55. For the reasons I have already given, I do not consider that any further due diligence is likely to throw any doubt on the correctness of the composition of the classes, as opposed to the fairness of what they are being offered. But even if it did, paragraph 10 does not provide a blanket ban on raising the point at the sanction hearing if Long Corridor, could explain why it had not been able to raise this point earlier.

5. ROADBLOCKS

56. Turning to the question of "roadblocks", I consider I should say something about the connection to the jurisdiction.

57. The English court will not exercise its discretion to sanction a restructuring plan under Part 26A CA 2006 in respect of a foreign company unless it is satisfied that the restructuring plan has a sufficient connection with the jurisdiction.

Snowden J in *Re Noble Group* [2018] EWHC 2911 (Ch) and [2018] EWHC 3092 (Ch); [2019] B.C.C. 349 at [74] stated that:

> "I do not think that the intention behind the *Practice Statement* was that the convening hearing should become the primary focus of the scheme process rather than the sanction hearing, and I do not think that it will always be appropriate for the court to agree to decide such issues at the convening stage. That is especially so where they involve consideration of factual evidence and/or the exercise of discretion as to whether it would be appropriate for the court to exercise its jurisdiction in international cases. The more appropriate time for such issues to be determined will often be at sanction."

58. Nevertheless, I consider that it is appropriate that the court at this stage of the convening hearing should give at least some consideration to whether this issue might be in the nature of a roadblock, i.e. an issue "*not going to the merits or fairness of the scheme, but which might lead the court to refuse to sanction the scheme*". Accordingly I have considered the question at a high level.

59. In short, without determining the matter of whether there is a sufficient connection, which I consider should be left to the sanction hearing, I do not believe at this stage there is any reason to believe that this will prove to be a roadblock. David Richards J (as he then was) in a similar case *Re Privatbank* [2015] EWHC 3299 (Ch) ("***Privatbank***") found that the fact that loan notes that were to be affected by a scheme of arrangement in that case had their terms governed by English law, and a submission to the jurisdiction of the English courts, or clauses submitting disputes to arbitration with a London seat was in that case a sufficient connection with England to justify the court considering, and if thought fit, sanctioning the proposed scheme of arrangement.

6. ADEQUACY OF THE EXPLANATORY MEMORANDUM

60. Under paragraph 15 of the Practice Statement, it is not for the court to approve the proposed Explanatory Statement. However the court may refuse to order the meetings of creditors if it considers that the Explanatory Statement is not in an appropriate form. I have satisfied myself that the proposed Explanatory Statement is in an appropriate form. I do consider, however, that as presently drafted the Explanatory Statement does not give sufficient prominence to the effect of the Plan on shareholders. In my view, in this particular case, it would be appropriate for the expected commercial effect of the Plan for shareholders to be considered alongside or close to the explanation of the expected effect on the members of the different classes, as this may weigh on their assessment of the fairness of the Plan. Mr Smith has indicated that the Plan Company will seek to reflect this observation in the version of the Explanatory Statement that is sent out.

7. DIRECTIONS

61. The Plan Company had helpfully provided a draft order, including draft directions. This was reviewed in detail during the hearing. Notwithstanding the urgency of this matter for the Plan Company, I considered it appropriate to slow down the proposed timetable leading to the Class meetings and the sanction hearing. This is because I accepted that the late receipt by creditors of the final version of the FTI Report and of the papers underlying it meant that creditors would require more time to obtain advice in order to assess the fairness of the Plan. This consideration has been reflected in the order that I have approved.