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## Re CFLD (Cayman) Investment Ltd

[2022] EWHC 3496 (Ch), [2022] All ER (D) 86 (Dec)

The Chancery Division allowed the claimant company's application for sanction of a scheme of arrangement. The scheme concerned a company based in China, which had experienced difficulties following the Coronavirus pandemic. Some of the company's bond holders were likely to be affected by the financial sanctions imposed on Russia as a result of the war in Ukraine. The court held that all the requirements for sanction of the scheme were made out. It would convene a single scheme meeting to vote on whether to approve the scheme.

**Catchwords**

*INSOLVENCY – CORPORATE RESTRUCTURING – SCHEMES OF ARRANGEMENT*

**Background**

The proceedings concerned a company, which was part of the China Fortune Land Development Group (the group). The group, which was predominantly based in the People's Republic of China (PRC) was facing a situation of tightening liquidity and its operation and financing had been adversely impacted by the credit environment and the consequences of the Coronavirus pandemic. The group had a very substantial property business in the PRC.

It sought an order convening a single meeting of scheme creditors to consider and, if thought fit, to approve a scheme of arrangement (the scheme). The scheme was part of a wider restructuring of the group's financial debts. The intended effect of the scheme was to address liquidity issues arising from the group's offshore debt, which was held by the company. The company was incorporated in the Cayman Islands.

Following the announcement of the proposed scheme, the company had become aware that certain bond holders were likely to be affected by the financial sanctions imposed on Russia as a result of the war in Ukraine. In particular, the sanctions had a practical effect on the scheme creditors whose existing bonds were held through Russia's National Settlement Depository or other sanctioned banks or depositories or who were otherwise unable to submit instructions or settle through the clearing systems as a result of the sanctions (the blocked scheme creditors). Blocked scheme creditors would be beneficially entitled to the restructuring consideration. That would be held on trust by the company for them until either the sanctions were lifted or the expiry of a 21-year perpetuity period, whichever was the earlier.

The company applied to the Chancery Division for the sanctioning of the scheme.

**Issues and decisions**

Whether the scheme would be sanctioned. Consideration was given to the requirements in s 896(1) of the Companies Act 2006 (CA 2006).

As to the notification of the hearing, the company had notified persons affected by the scheme in sufficient time (see [16] of the judgment).

Regarding the identity of scheme creditors, the bond holders were creditors within Part 26 of CA 2006, which included contingent creditors. They did not own their own certificates. Rather, they were held in registered global form as registered global certificates which bond holders were entitled to have registered in their names. It was the established practice to treat such bond holders as contingent creditors (see [17] of the judgment).

Regarding the classes of creditors proposed by the company, there was more to unite the class than divide them and so there was no need to create any further classes to meet together to consider the scheme (see [25] of the judgment).

In relation to jurisdiction, the scheme was a compromise or arrangement within CA 2006, s 895(1)(a). There might be an issue as to whether the company was a company within the meaning of CA 2006, which was defined as a company liable to be wound under the Insolvency Act 1986 (IA 1986). However, at the present stage, the approach of the court was to defer issues regarding whether the court should exercise jurisdiction to the sanction hearing unless there was jurisdictional roadblock. In the present case, there was not. Further, the sanction order would take effect in the Cayman Islands, which was where the company was incorporated (see [26] of the judgment).

As to the documentation, the documents communicated all material matters in a way that was comprehensible to the intended addressees, who were all assumed to be sophisticated investors (see [28] of the judgment).

The court would convene a single scheme meeting to vote on whether to approve the scheme and would make the order in the terms sought (see [29] of the judgment).

*T & N Ltd, Re* [2005] All ER (D) 211 (Dec), [2005] EWHC 2870 (Ch), [2006] 3 All ER 697 *applied*

**Judgment date**
7 December 2022

**Judge**
Judge Michael Green (Chancery Division)

**Representation**
T Smith KC and M Abraham for the applicants.

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