IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 9

CAUSE NO. FSD 306 OF 2024 (IKJ)

IN THE MATTER OF SECTION 86 OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF KAISA GROUP HOLDINGS LTD

IN CHAMBERS

Before:	The Hon. Justice Kawaley
Appearances:	Mr Michael Todd KC of counsel with Mr Ben Hobden and Ms Caitlin Murdock of Harney Westwood & Riegels for the Petitioner/Kaisa
Heard:	On the papers
Date of decision:	15 January 2025
Draft Reasons circulated:	29 January 2025
Reasons delivered:	7 February 2025

Petition to sanction scheme of arrangement between company and its creditors-summons for directions to convene meeting of scheme creditors-parallel schemes-governing principles-Companies Act (2023 Revision) section 86-Grand Court Rules (2023 Revision) Order 102 rule 20-Practice Direction No. 2 of 2010

REASONS FOR CONVENING ORDER

Introductory

1. By a Petition dated 27 September 2024, the Petitioner sought to sanction a creditors' scheme of arrangement under section 86 of the Companies Act (2023 Revision) ("the Act"). The Petition was amended on 6 January 2025. The Summons for Directions was listed for hearing on 15 January 2025.

2. As the scheduled hearing approached, I directed that the hearing could take place on the papers, erroneously believing that (as in the case of other unconnected recently filed petitions) a request for the Summons for Directions to be heard on the papers had been made. When I realised my mistake, I was told that counsel had not signified any objection to dispensing with an oral hearing and I proceeded to deal with the application on the papers on that basis.

3. The high value of the debts involved in the proposed restructuring scheme did not diminish the relative simplicity of the issues to be determined at the Summons for Directions stage. However, a parallel scheme is being pursued in Hong Kong and any ultimate sanction order will have to be recognised in the United States. Because of this, when granting the directions sought by the Petitioner on 15 January 2025 (the "Convening Order"), I indicated that I would give short reasons for this decision.

4. These are the reasons for my decision to grant the Convening Order.

Legal findings

5. Section 86 of the Act, so far as is material, provides as follows:

> "*(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application of the company or of any creditor or member of the company, or of a restructuring officer appointed in respect of the company, or where a company is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.*

> *(2) If a majority in number representing seventy-five per cent in value of the creditors or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, as the case may be, and also on the company or, where a company is in the course of being wound up, on the liquidator and contributories of the company…*"

6. The principles which inform this Court's jurisdiction to sanction schemes of arrangement have been settled for many years. The most important overarching legal principle established by case law on section 86 is that assuming the proposed scheme is one which reasonable stakeholders might approve, it is for those stakeholders (and not the Court) to assess the commercial merits of the scheme.

7. The practice is also well settled. The Petitioner's counsel also helpfully placed Practice Direction No.2/2010 before the Court. Paragraph 3 of the Practice Direction provides:

> "***Matters to be determined at the first Hearing***
>
> *3.1 The first hearing (on the interlocutory summons for an order to convene the Court meeting) will normally be heard ex parte, but practitioners should consider giving notice to persons affected by the scheme in cases where class or other issues as referred to in paragraph 3.3 below arise, and where it is practical to do so. Such notice should include a statement of the intention to promote the scheme and of its purpose, and also of the proposed composition of classes and of the intention to raise any issue as referred to in paragraph 3.3 below.*
>
> *3.2 In every case the Court will consider whether it is appropriate to convene class meetings and, if so, the composition of the classes so as to ensure that each meeting consists of shareholders or creditors whose rights against the company which are to be released or varied under the scheme, or the new rights which the scheme gives in their place, are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. It follows that the supporting affidavit must contain all such information as may be necessary to enable the Court to make this determination. The applicant should also raise at the first hearing any other matter which may affect the conduct of the meeting(s).*

3.3 At the first hearing, the Court will also consider any other issue which is relevant to the jurisdiction of the Court to sanction the scheme, and any other issue which, although not strictly going to jurisdiction, is such that it would unquestionably lead the Court to refuse to sanction the scheme.

3.4 It is the responsibility of the applicant by evidence in support of the application or otherwise to draw the attention of the Court to any issue in relation to the meeting(s) or any issue in paragraph 3.3 above. Unless the applicant's case in relation to the meeting(s) or any issue in paragraph 3.3 above is a plain and obvious one, the applicant's counsel should provide the Court with a skeleton argument addressing the relevant issues.

3.5 The Court will, if necessary, give directions for the resolution of any such issues including, if necessary, directions for the postponement of meeting(s) until that resolution has been achieved, and will hear interested parties. The Court will expect any person who raises any such issue at the hearing to sanction the scheme to show good cause why they did not raise it at an earlier stage.

3.6 The Court will consider whether the proposed time and place of the Court meeting(s) and the method of giving notice is appropriate in all the circumstances. The test is whether the parties having the economic interest, which is typically not the registered holder of the shares or debt instruments, will have sufficient time in which to consider the scheme documentation and make an informed decision. Where necessary, the Court should be provided with evidence of the "shareholder/creditor profile". In cases where the relevant shares or debt instruments are listed on a stock exchange, the Court must be provided with all necessary evidence upon which to satisfy itself that the proposed notice period and method of giving notice will comply with applicable rules.

3.7 The applicant must satisfy the Court that the scheme documentation will provide the shareholder/creditor (which for this purpose means the person having the ultimate economic interest) with all the information reasonably necessary to enable them to make an informed decision about the merits of the proposed scheme. Since this application will typically be made ex parte, the applicant's counsel must draw the

Court's attention to any aspects of the explanatory memorandum or proxy statement which might arguably depart from best practice…"

8. The Petitioner in its counsel's Skeleton Argument cited *E-House (China) Enterprise Holding Ltd*, FSD 2022/165, Judgment dated 17 November 2022 (unreported) and the following observations of Segal J:

> "'*52. It is now well settled that the function of the Court at a scheme convening hearing is not to consider the merits or fairness of the proposed scheme. These issues arise for consideration at the sanction hearing if the scheme is approved by the requisite majority of creditors. At the convening hearing the court is concerned with a narrower range of issues when determining whether to give directions for the convening of the scheme meeting and if so what those directions should be. The issues for consideration are referred to in the Practice Direction (at [3]). They are now frequently summarised as covering three main areas, namely* ***first****, any issues which may arise as to the constitution of the meeting or meetings of creditors;* ***secondly****, any issues as to the existence of the Court's jurisdiction to sanction the scheme and* ***thirdly****, any other issue (not going to the merits or fairness of the scheme) which might lead the Court to refuse to sanction it (which will usually include a review of the extent to which the scheme will be effective abroad in other relevant jurisdictions).*
>
> *53. In addition, the court will consider whether adequate notice has been given to creditors of the purpose and effect of the proposed scheme and of the convening hearing.' (emphasis added)*"

9. Because the requirements of law and practice are so well established, the approach to applications such as the present follow a largely similar structural approach even though the underlying commercial components vary significantly from case to case. In summary, in my experience:

   (a) scheme documents and explanatory statements typically describe and explain the proposed scheme with comparable levels of particularity, exhibiting similar categories of supporting documents;

   (b) creditor (and member) schemes typically involve sophisticated investors and rarely 'ordinary consumers';

(c) the larger and more costly the proposed restructuring is, the more likely it is that an application to convene a meeting to approve a scheme will only be made once the promoters are confident that they already have or are very likely to attract the requisite stakeholder support for a legally viable scheme;

(d) promoters of substantial schemes generally adopt a precautionary approach in terms of addressing class composition issues and advertising of the scheme meetings; and

(e) the cases where a scheme meeting approves a proposed scheme by the requisite majorities and dissenting stakeholders appear and oppose an application to sanction a scheme are very rare indeed[1].

The proposed scheme

10. The case for the Convening Order was comprehensively and convincingly supported through evidence (most significantly through the First and Second Affirmations of Dr Tam Lai Ling) and legal submissions.

11. The Petitioner is an investment holding company which serves as a vehicle for financing its underlying businesses linked to the Chinese property market, the liquidity of which has deteriorated significantly in recent years. The proposed scheme in the present case involved 80.3% of the Petitioner's total indebtedness of US$ 15.27 billion, being the so called "Kaisa In-Scope Debt" valued at $12.27 billion. In addition to the present scheme (the Kaisa Cayman Scheme), three other interdependent schemes are contemplated:

(a) the Kaisa Hong Kong Scheme;

(b) the Rui Jing HK Scheme; and

(c) the Rui Jing BVI Scheme.

[1] Over the past 20 years (in Bermuda and Cayman), I can recall only one contested sanction hearing. Over the last six plus years in the Cayman Islands (when I have sanctioned on average at least five section 86 schemes per year, I do not recall a single contested sanction application.

12. Rui Jing is a wholly owned subsidiary of the Petitioner. Although the Scheme Creditors of the Kaisa Cayman and Kaisa HK are the same, some but not all of them have overlapping claims as Scheme Creditors in relation to the Rui Jing Schemes. Scheme Creditors with overlapping claims, who as Rui Jing investors are beneficiaries of guarantees not available to those who invested in Kaisa alone, will be allowed to participate in both the Kaisa Schemes and the Rui Jing Schemes and will accordingly receive more generous distributions in the form of the new debt instruments to be issued as scheme consideration under each of the Kaisa and Rui Jing Schemes in return for the cancelled debt. The logic of a single class of Kaisa Scheme Creditors seems compelling: as all distributions of scheme consideration to Kaisa Scheme Creditors will take place on the same basis.

13. After granting the Convening Order, a 13 January 2025 decision in a Hong Kong case involving a parallel Cayman Islands scheme came to my attention which seemingly confirms this 'narrow' approach to class composition: *Re Add Hero Holdings Limited and Re China Aoyuan Group Limited* [2025] HKCFI 310. This judgment confirms that both this Court and the Hong Kong court have very recently expressly decided that the existence of some scheme creditors with overlapping claims in the scheme of another company does not require a separate class to be constituted. Harris J held:

> "*77. I agree that a proportion of Scheme Creditors of Holdings had the benefit of guarantees granted by Hero and were able to vote in both the Holdings and Hero's Schemes on the basis of the full value of their claims and receive Scheme Consideration in both sets of Schemes and this is a special interest (which I note was acknowledged by Holdings in the application for sanction of the Holding's Scheme before Doyle J in the Cayman Islands), because it is an additional reason for the over-lapping Scheme Creditors to vote in favour of the Holdings' Scheme. However, it does not seem to me that it has been demonstrated by Ping An that it undermines the representative nature of the vote by the majority at the Holdings' Scheme Meeting. To do so Ping An would have to prove that the additional benefits obtained by the over-lapping creditors from the approval of the Hero's Scheme were, or were likely to have been, a material reason for voting for the Holdings' Scheme. Ping An has adduced no evidence which suggests that this was the case; in fact, Ms Lam did not in argument goes so far as to suggest it was the case. The absence of any evidence or argument that identifies a credible reason for thinking that the over-lapping creditors decision to approve the Holdings' Scheme was motivated by the benefit to be obtained by approval of Hero's Scheme is consistent with my decision in respect of the constitution of the class. In practice what might, in*

my view, reasonably be assumed is that some of the over-lapping creditors considered the two Schemes together, i.e. as a package, but this does not of itself mean that their approach to the decision to support the Holdings' Scheme was influenced by factors that made their deliberations unrepresentative of those of other Holdings' Scheme Creditors. As I have demonstrated an additional interest does not fracture a class. Neither does it mean that the deliberations are to be assumed to be unrepresentative."

14. That judgment was delivered following an opposed sanction hearing in Hong Kong. In this Court, explaining the making the Cayman convening order in Re *China Aoyuan Group Limited*, FSD 284/2023 (DDJ), Judgment dated 2 November 2023 (unreported), Doyle J approved a single class meeting on the grounds that all scheme creditors were in relation to the relevant company before the Court "*in the same boat*" (at paragraph 13). The sanction hearing took place in that case on 7 December 2023 on an unopposed basis. Obviously these observations do not prejudge the position this Court may take in the present case at the sanction stage should there be contested argument.

15. The Petitioner also justified the differential treatment of "Kaisa Blocked Scheme Creditors". Although they are restricted from receiving any distributions while subject to "Applicable Sanctions", their rights to vote and their distribution rights are otherwise substantively the same. In *E-House (China) Enterprise Holding Ltd*, Segal J disapproved of proposed directions would have deprived sanctioned stakeholders from the right to vote as opposed limiting their rights to receive distribution rights.

16. The proposed debt restructuring takes a familiar form in circumstances where a liquidation analysis commends recourse to a restructuring rather than a liquidation. This is not the only case before this Court where it appears to be accepted commercial wisdom that it makes no sense to attempt to liquidate assets impaired by the Chinese real estate crisis. The proposal does not involve 'kicking the can down the road'. It involves disposing of the existing debt 'can' altogether, and recycling it as a new 'can' containing new debt instruments which mature between 2027 and 2023, and which take the form of:

    (a) "New Notes"; and

    (b) "MCBs" (mandatory convertible bonds, convertible into Kaisa shares).

17. The implementation of the Kaisa Schemes will be administered by independent Scheme Administrators, with a Scheme Adjudicator competent to resolve disputes about the allocations of new instruments made to Scheme Creditors. The efficacy of the Kaisa Schemes in relation to New York law governed debts would be met by applying for recognition under Chapter 15 of the US Bankruptcy Code, it was deposed and submitted. English law governed debts arose under a trust deed containing an exclusive jurisdiction clause in favour of the Hong Kong courts, and it was hoped that most (if not all) of the relevant stakeholders would be bound by the Kaisa HK Scheme.

18. No reasons for the Court being arguably bound to decline to sanction the Kaisa Cayman Scheme were identified. The Petitioner's evidence properly drew the Court's attention to queries raised by the Hong Kong Court about the number of Scheme Creditors, the basis for a conversion rate and the level of the "AHG Work Fee" when granting the Convening Orders on 19 December 2024 in relation to the Kaisa HK Scheme and the Rui Jing HK Scheme. The Petitioner has indicated it will consider these points, and they did not (understandably) dissuade the Hong Kong court from allowing the meetings to proceed in any event. I see no need to comment further on these matters.

19. In addition to giving at least 21 days' notice of the Kaisa Cayman Scheme Meeting through the Transaction Portal, the Hong Kong Stock Exchange website, clearing houses and email addresses (where known), advertisements were proposed in the Cayman Islands (Cayman Gazette) and in Hong Kong in Chinese and English (Sing Tao Daily and the Standard). A Practice Statement Letter providing an overview of the Kaisa Schemes was circulated on 11 December 2024.

20. As regards the meeting itself, I considered it appropriate in these circumstances to approve the following directions:

> "*2. The Kaisa Cayman Scheme Meeting shall be held at the offices of Sidley Austin at 39/F, Two International Finance Centre, 8 Finance Street, Central, Hong Kong (or if such venue is not available, such other suitable venue in Hong Kong or the Cayman Islands as the Chairperson as defined at paragraph 10 below shall select) with a live video conference linked to the offices of Harney Westwood & Riegels (Cayman) LLP at 3rd Floor, Harbour Place, 103 South Church Street Grand Cayman PO Box 10240, KY1-1002 Cayman Islands, at 10:00am Hong Kong time on 28 February 2025, the equivalent being 9:00pm Cayman Islands time on 27*

February 2025, or a later time immediately after the conclusion of the Kaisa Hong Kong Scheme Meeting, subject to any adjournment as may be approved by the Chairperson."

21. A Court meeting on 27 February 2025 following the corresponding Hong Kong Court Meeting, notified by variety of means to Scheme Creditors (most of whom had already signified in principle support for the Kaisa Cayman Scheme) was proposed. I considered this would clearly afford stakeholders with sufficient time to consider whether or not to approve the Kaisa Cayman Scheme as the length of notice proposed appeared to be broadly consistent with the notice period this Court routinely approves in comparable cases.

22. Finally, and significantly, the Kaisa and Rui Jing Schemes are based, according to the evidence, on a Restructuring Support Agreement signed (as of 1 December 2024) by approximately 79% in value of Kaisa Scheme Creditors' claims and over 81% in value of Rui Jing Scheme Creditors' claims. This provided a very solid foundation for concluding in the round that it was appropriate to grant the Convening Order. Moreover, Justice Linda Chan had granted a similar Convening Order in Hong Kong on 19 December 2024 in relation to the corresponding Kaisa HK Scheme.

Conclusion

23. For these reasons, on 15 January 2025 I granted the Convening Order in relation to the Kaisa Cayman Scheme.

THE HONOURABLE JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT