Cayman Court directs convening of Scheme Creditors of Kaisa Group Holdings Ltd

Pursuant to section 86 Companies Act (2023 Revision), on 15 January 2025, Kawaley J made an order, of the Grand Court of the Cayman Islands, directing a meeting of creditors of Kaisa Group Holdings Ltd (**Kaisa**) to be convened, and consequential directions in relation to that meeting. The scheme before the Court was one of four interdependent schemes (**Schemes**). The Objective of the Schemes was to effect a restructuring of the indebtedness of the Kaisa Group (**Group**).

Kaisa is an investment holding company. It served as the vehicle for financing the Group's underlying businesses. Those businesses were linked to the property market in the PRC. Amongst other things, Kaisa is the issuer 16 series of publicly issued US Dollar denominated senior secured notes (**Notes**), the law of which Notes is New York law, with a present value of US$11.70 billion. The obligations under the Notes are guaranteed by, amongst others, Kaisa's principal subsidiary, Rui Jing Investment Company Ltd (**Rui Jing**).

To effect the Restructuring, two Schemes are proposed by each of Kaisa and Rui Jing; in respect of Kaisa, one in Hong Kong and one in Cayman (Kaisa's place of incorporation), and in respect of Rui Jing, one in Hong Kong and one in BVI (Rui Jing's place of incorporation. As the Notes are governed by New York law, Chapter 15 Recognition of the Schemes' sanction will be sought in the US.

An order directing the convening of a single meeting of Scheme Creditors of Rui Jing was made by Mithani J in the BVI on 16 January 2025. On 7 February 2025 Kawaley J delivered his reasons for directing the convening of a single scheme meeting of Scheme Creditors of Kaisa.

Usually, a court's ruling in relation to the convening of scheme meetings is unremarkable. In some cases, a point of some interest will arise. For example, in ***GW Pharmaceuticals PLC*** [2021] EWHC 716 (Ch), the issue arose as to how a Depositary, holding shares both in favour and against approval of a scheme should be counted for the purposes of the numerical majority test. In other cases, where the Court has raised concerns of its own motion, it will give reasons for its decision: see ***Re Noble Group Ltd*** [2018] EWHC 2911 (Ch).

But, as Kawaley J said in Kaisa, the high value of the debts involved does not, and did not, diminish the relative simplicity of the issues to be determined at the Convening Hearing stage. What he thought merited giving short reasons for his direction to convene the single meeting of

Scheme Creditors were the fact that a parallel scheme was being pursued in Hong Kong and that any ultimate sanction would have to be recognised in the US.

Those points aside, there are three points going to the issue of class composition worthy of mention.

Of course, the primary issue with class composition is in seeking to ensure that those summoned to the scheme meeting do not have rights, both before and under the scheme, which are so dissimilar to the rights of others also summoned to the meeting, so as to make it impossible for them to consult together with a view to their common interest: ***Sovereign Life Assurance Co v Dodd*** [1892] 2 QB 573. That issue is addressed by a comparison of the rights of creditors which are to be altered or extinguished by the scheme (**rights in**) and the new rights to which those creditors will become entitled under the scheme (**rights out**): ***Re Noble Group Ltd***.

The first point is that, in Kaisa, the court was faced with the fact that those creditors of Kaisa who held Notes would, by virtue of the fact that their rights were guaranteed, also had rights under the Restructuring, as contingent creditors, against Rui Jing (so-called **overlapping creditors)**; other creditors simply had rights solely against Kaisa. Kawaley J found the logic of a single class was compelling. "[A]ll distributions of scheme consideration to Kaisa Scheme Creditors will take place on the same basis." He found support for that decision in ***Re Add Hero Holdings Ltd and Re China Aoyuan Group Ltd*** [2025] HKCFI 310 Harris J, and, in Cayman, in ***Re China Aoyuan Group Ltd*** FSD 284/2023, 2 November 2023 Doyle J.

Second, the court was faced with the issue whether the fact and/or level of "work fees" payable to the Ad Hoc Group of creditors was such as to fracture the class of creditors so as to require those in receipt of those fees to be placed in a different meeting. The court did not require that to be done. It was satisfied that those creditors could be summoned to the same meeting as those creditors not in receipt of any work fees.

Similar concerns were addressed by Snowden J in ***Re Noble Group***. He required further evidence to be adduced in connection with those fees prior to the sanction hearing.

Similarly, at the convening Hearing of the Kaisa Scheme in Hong Kong Linda Chan J raised issues as to the level of the AHG work fees, and the information provided to creditors in relation to those fees. Of course, the fact that the court convened a single meeting of Scheme Creditors would not prevent a creditor raising the issue of inappropriate class composition at the Sanction Hearing.

The need for the provision of adequate information to Scheme Creditors so as to enable them to make informed investment decisions is the third point. It is the Scheme Companies and their advisers that usually have all the relevant information. Both the Convening Hearings and the Sanction Hearings should be treated by those Companies and their advisers as though they are *ex parte* applications. The Court is heavily reliant on the Scheme Companies and their advisers to provide full information, both as to law and fact, which is relevant to whether the Court should make the orders sought. And that does not apply only to Companies Act Schemes of Arrangement: ***Re Wealthtek LLP*** [2024] EWHC 3050 (Ch) Rajah J.

We have all been warned!

Michael Todd KC of Erskine Chambers appears together with Ben Hobden and Caitlin Murdock of Harney Westwood & Riegels for Kaisa, in relation to the Cayman Scheme, and for Rui Jing, in relation to the BVI Scheme.