CAREY OLSEN

Convening scheme meetings: Cayman Islands Court in *China Aoyuan* confirms the applicable principles

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Introduction

The first stage in any restructuring by way of a scheme of arrangement in the Cayman Islands involves meetings of such classes of creditors or shareholders (as the case may be) to consider, and if thought fit, approve the terms of the scheme. An application to Court is required for orders to be granted for convening such meetings. If, at these meetings, the requisite statutory majorities are satisfied, the second stage involves obtaining Court sanction for the proposed scheme to become effective.

Recently, the first stage was considered in the context of a restructuring of a Chinese property developer that focuses on the development and sale of residential and commercial properties (***In the matter of China Aoyuan Group Limited*** (unreported, 2 November 2023)). In this article, we will briefly examine the Cayman Court's treatment of the first stage and, more specifically, the parameters the Court will consider in deciding if it should grant an order for scheme meetings to be convened.

The Decision

In *China Aoyuan* Justice Doyle granted the company's application for scheme meetings to be called and in so doing, confirmed certain established principles applicable at the first stage of the process:

1. The Court's role at this stage is not to consider the fairness or merits of the scheme. It may review its terms to ensure that there are no manifest deficiencies, but its role is not to approve the scheme terms.
2. Unless there are any "*obvious roadblock[s]*" or "*showstopper[s]*" that would unquestionably lead the Court to refuse eventual sanction of the scheme (assuming the requisite majorities are satisfied), the Court would order scheme meetings be convened: the Court is concerned with ensuring the creditors (and members, as the case may be) are afforded the opportunity to consider and assess the scheme. On its facts, the proposed scheme was conditional on all schemes in the Cayman Islands, Hong Kong and the British Virgin Islands being duly sanctioned by their respective courts. There was nothing to suggest that the scheme proposed in the Cayman Islands would not have international effectiveness in the relevant jurisdictions, or that it would not be recognised internationally, so as to amount to there being a roadblock.
3. Class composition is a key consideration: differences in rights (distinct from interests) do not necessarily fracture a class and unnecessary class proliferation should be avoided. The relevant comparator must be identified in ascertaining if the rights of the creditors (or members, as the case may be) are not so dissimilar as to make it impossible for them to consult together with a view to their common interests. On its facts, the creditors who held security were no different to those that did not because the relevant comparator was a liquidation scenario where the security would be rendered worthless.
4. Depending on the specific terms of the scheme, certain fees payable, such as work fees or advisor fees, do not fracture a class.

Closing comments

Whilst the general principles applicable at the convening stage are uncontroversial, their application and the consequent success of any application to convene scheme meetings very

much turns on the specific facts and terms of the scheme proposed. Having regard to the practical utility of a Cayman scheme of arrangement, and the reported instances of distressed enterprises, we anticipate that there will be further deployments of schemes in the Cayman Islands as businesses seek to restructure to allow them to move confidently forwards.

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FIND US

Carey Olsen Hong Kong LLP
Suites 3610-13
Jardine House
1 Connaught Place
Central
Hong Kong SAR

T +852 3628 9000
E hongkong@careyolsen.com

Carey Olsen
PO Box 10008
Willow House
Cricket Square
Grand Cayman KY1-1001
Cayman Islands

T +1 345 749 2000
E cayman@careyolsen.com

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