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CLASS COMPOSITION IN SCHEMES OF ARRANGEMENT

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A crucial element to any scheme of arrangement is the question of how creditors are to be classed for voting purposes. In this regard, while the proper test for the classification of scheme creditors is well established, the increasing sophistication of restructuring deals has resulted in recent decisions that reveal finer aspects of the implementation of this test. This article explores the practical issues that appear to be arising with increasing frequency in relation to the composition of creditor classes and proposes a framework for the determination of classification issues.

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I. Introduction

1 The test for creditor classification was stated by the Court of Appeal in the seminal decision of *The Bank of Scotland NV v TT International Ltd*[1] as being:

> … if the scheme favours or prejudices a group of creditors (against other creditors) differently from how they would be favoured or prejudiced in a liquidation, such as to give them an additional non-private interest to vote for or against the scheme (which would make it impossible for them to consult the other creditors with a view to their common interest), then that group of creditors should be classed separately.

2 While the test itself is well established, its application is not quite so. Often, class composition is a matter that is bitterly

1 [2012] 2 SLR 213 at [133].

disputed between the scheme company and a (or a group of) dissenting creditor(s).

3 Given that the issue of classification is one which goes towards the court's jurisdiction to sanction a scheme,[2] it is vital for a scheme proponent to ensure the correct class composition.

II. Background

4 In practical terms, there are three broad steps to creditor classification:[3]

(a) First, identify the comparator. This refers to the most likely scenario in the absence of scheme approval, which will often, although not necessarily, be insolvent liquidation.

(b) Second, assess whether the relative positions of creditors under the proposed scheme mirror their relative positions in the comparator.

(c) Third, if there is a difference between the creditors' relative positions identified in the second step, assess whether the extent of the difference is such as to render the creditors' rights so dissimilar that they cannot sensibly consult together with a view to their common interest. If a creditor's (or a group of creditors') position will improve or decline to such a different extent *vis-à-vis* other creditors simply because of the scheme terms assessed against the comparator, then those creditors should be placed in a different voting class.

5 However, complications arise where the difference in the creditors' relative positions involves differing interests. In this regard, while it is generally accepted that the rights of creditors, not their separate commercial or other interests, should determine whether they form a single class or separate classes,[4]

2 *The Bank of Scotland NV v TT International Ltd* [2012] 2 SLR 213 at [58].
3 *Pathfinder Strategic Credit LP v Empire Capital Resources* [2019] 2 SLR 77 at [88].
4 *The Bank of Scotland NV v TT International Ltd* [2012] 2 SLR 213 at [130]; though note *Pathfinder Strategic Credit LP v Empire Capital Resources* [2019] 2 SLR 77
(cont'd on the next page)

that position merely forms the starting point of the difficulties in navigating the interests/rights divide.

III. Practical issues affecting class composition

6 As observed in *Primacon Holding GMBH v A Group of Senior Lenders & Credit Agricole*,[5] "[j]udges frequently use imprecise language when precision is not material to the question to be decided, and in many contexts the words 'interests' and 'rights' are interchangeable."

7 Indeed, recent Singapore and English decisions have brought to the fore the practical difficulties in drawing a distinction between rights and interests in determining the composition of creditor classes.

A. Bifurcation of an undersecured creditor's claim

8 It is not uncommon for banks to extend various forms of financing (secured or unsecured) to a company. In this regard, under English law, cross-holdings do not of themselves fracture class composition because to the extent that creditors have cross-holdings, the rights given to them under the scheme in their capacity as members of a particular class are the same as the rights given to other creditors in that class.[6] Rather, such matters are appropriately considered at sanction when it can be ascertained whether the majorities in one class have been obtained as a result of creditors with cross-holdings voting so as to promote their interests in another class rather than their interests in the class in which they are voting.[7]

9 Consequently, the fact that a creditor has secured and unsecured claims against the company does not mean that it

at [89] where the court considered the position sensible but declined to reach a conclusion.

5 [2011] EWHC 3746 at [46].

6 *Re Lehman Brother International (Europe)* (2018) EWHC 1980 (Ch) at [79];. *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) at [46].

7 *Re ColourOz Investment 2 LLC* [2020] EWHC 1864 (Ch) at [88].

cannot vote with the other secured and unsecured creditors in their respective classes.

10 However, complexities arise when the scheme proposes to bifurcate the claim of an undersecured creditor, leaving it with a secured claim (to the extent of the value of its security) (the "secured portion") and an unsecured claim (being the difference between the total claim and the collateral value) (the "unsecured portion").[8]

11 Theoretically, following the reasoning discussed above, the bifurcation should not mean that the undersecured creditor cannot vote the secured portion with other secured creditors and the unsecured portion with other unsecured creditors. This is because the rights given to the undersecured creditor in its capacity as a secured creditor for the secured portion and an unsecured creditor for the unsecured portion are the same as those given to other secured and unsecured creditors respectively. Yet, this is not necessarily always the case.

12 In the pre-packaged scheme undertaken by Hoe Leong Limited ("Hoe Leong") which was sanctioned by the Singapore court in January 2018 (decision unreported), undersecured creditors who had their claims bifurcated into secured and unsecured portions based on their security value were allowed to vote in the secured class for the secured portion and in the unsecured class (together with other unsecured creditors) for the unsecured portion.[9]

13 However, the Singapore court then took a different approach in the scheme undertaken by Pacific International Lines ("PIL") in 2021 (decision unreported). The PIL scheme similarly proposed that the undersecured claims would be bifurcated based on their security value and that those undersecured creditors

8 For example, a creditor with a claim of $10 that is secured by collateral worth $4 (*ie*, an undersecured creditor) would have his claim bifurcated into a secured portion worth $4 and an unsecured portion worth $6.

9 Using the hypothetical at n 8 above, this meant that the undersecured creditor would vote his $4 secured portion in the secured claims class and his $6 unsecured portion in the unsecured claims class.

would vote the respective portions of the bifurcated claim with the secured and unsecured classes.

14 At the convening stage, an opposing creditor argued that the unsecured portions held by undersecured creditors should be classed separately from the other unsecured claims. Curiously, that creditor did not object to a creditor who held separate secured and unsecured debts (the "cross-holdings creditor") voting its unsecured debt with the other unsecured claims.[10] At the hearing, the court took the view that it was not bound by the classification in Hoe Leong and that as regards PIL's scheme, the interests of undersecured creditors were sufficiently dissimilar to those of the unsecured creditors such that the unsecured portions had to be classed separately from other unsecured claims.[11]

15 Given the diverging decisions, it remains to be seen how the Singapore court will approach the issue in future.

16 On one hand, given that bifurcation artificially divides a single claim and allows an undersecured creditor to have two votes instead of one (albeit in different classes), such arrangements are understandably viewed by other creditors with suspicion.

17 Moreover, an undersecured creditor whose claim is bifurcated would obviously consider its returns from the secured portion when determining how to vote in respect of the unsecured portion. This inevitably raises questions as to whether such a creditor can sensibly consult the unsecured creditors with a view to their common interest.

18 Deferring consideration of the potentially diverging interests to the sanction stage may not necessarily be ideal as an

10 No directions were made regarding the cross-holdings creditor in the circumstances. However, in so far as correct classification affects the court's jurisdiction to sanction the scheme, it may be argued that allowing the cross-holdings creditor to vote its unsecured debt with the other unsecured claims (and thereafter sanctioning the scheme) amounts to an implicit acceptance of the English position on cross-holdings.

11 Using the hypothetical at n 8 above, this meant that the undersecured creditor would vote his $4 secured portion in the secured claims class but vote his $6 unsecured portion in a separate class from other unsecured claims.

opposing creditor could still face a material hurdle in challenging whether the class was fairly represented at the meeting (the "fair representation requirement") or whether an intelligent and honest man might reasonably approve the scheme (the "man of business requirement").[12] It might also be the case that creditors "see little point in engaging in opposition to a scheme where they can see that the statutory majority will be achieved".[13]

19 On the other hand, there is generally nothing sinister with bifurcating undersecured claims in a scheme as such treatment is intended to mirror the position of undersecured creditors in a liquidation where they may realise their security and prove for the remainder together with the unsecured creditors.

20 Further, requiring the unsecured portion to be placed in a separate class from other unsecured claims where both claims receive the same treatment under the scheme arguably blurs the distinction between rights and interests that has been carefully preserved in the line of English cases on cross-holdings. This would be undesirable as classification affects the jurisdiction of the court to sanction the scheme and should therefore be considered and determined with utmost precision.

21 A creditor aggrieved by the differing interests is not without recourse as these considerations can be addressed at the sanction stage and any concerns as to hurdles that such a creditor would face can be addressed through information disclosures by the scheme company and the scheme manager.[14]

B. Acquisition of debts by a potential investor

22 A common strategy employed by financial investors seeking to take control of a distressed target is to acquire the target's debts with a view to converting such debts to equity. The conversion can either take place out of court (*eg*, through enforcement of security) or through insolvency proceedings in

12 *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) at [52].
13 *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) at [52].
14 Discussed at para 48 below.

court (*eg*, through a credit bid in a judicial management sale). However, where such "loan-to-own" strategies are effected through a scheme, particular issues may arise concerning the classification of the acquired debts.

23 In *Re DSG Asia Holdings Pte Ltd*[15] ("*DSG*"), certain claims held by parties related to the scheme company ("related claims") were sold to a white-knight investor, Allington Advisory ("Allington"). DSG then executed a term sheet for Allington to provide a secured emergency working capital facility of up to S$3 million and acquire a majority stake in DSG for a "base investment amount" of S$2 million. A pre-packaged scheme was subsequently proposed with Allington voting the related claims together with the other unsecured creditors.

24 At the hearing for approval of the scheme, it was contended that Allington should not have been classed together with other unsecured creditors as it was a secured creditor (in respect of the rescue financing) and a potential investor. While the court found that Allington's role as rescue financier was irrelevant to classification as it did not arise out of and was not dependent on the scheme, it found that Allington's role as potential investor was relevant and significant enough to render Allington unable to consult the other unsecured creditors with a view to their common interest because the investment was conditional on the scheme being implemented.

25 Arguably, the decision in *DSG* similarly blurs the distinction between rights and interests given that Allington was not given an additional right to acquire the equity stake in its capacity as a creditor. Further, it would have provided consideration for the acquisition.[16] If the underlying concern was that Allington had voted solely to advance its motive of acquiring DSG, this could have also been addressed by disregarding Allington's vote on the basis that it disregarded the interests of its class.[17] As will

15 [2021] SGHC 209.

16 See *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) at [62].

17 As is the case with related party debts: see *SK Engineering & Construction Co Ltd v Conchubar Aromatics Ltd* [2017] 2 SLR 898. Unfortunately, this argument was not raised by the opposing creditor.

be discussed later, the separate classification of a claim does not necessarily achieve the effect of having the corresponding vote disregarded.

26 In any event, in the light of *DSG*, where an acquisition of a scheme company is contingent on the implementation of the scheme, any claims acquired by the potential investor will now have to be classed separately. This could affect creditors who wish to capitalise on distressed opportunities by acquiring an equity stake at a discount as the reasoning could arguably extend to debts held by the potential buyer even before an acquisition was contemplated.

27 Nevertheless, *DSG* should not be taken to completely preclude the possibility of implementing "loan-to-own" strategies through a scheme as a different transaction structure could yield a different result. In *Re Stripes US Holdings Inc*,[18] Zacaroli J held that creditors who would receive consideration (which included equity interests in the company) for participating in an exit facility did not have to vote in a separate class because all scheme creditors had the right to participate in the facility. This was notwithstanding that the scheme was essential in order for the exit facility to be implemented and that a precondition to participation was subjecting a minimum holding of €75 million in debt to the lock-up agreement.

28 Further, although a creditor was given an independent entitlement to participate in the facility, this did not create such a difference in rights as to require separate classification as the entitlement was based on good commercial reasons, including that the creditor was fronting the exit fee and that it participated in rescue financing for the company's subsidiaries.

29 Accordingly, "loan-to-own" strategies may potentially still be successfully implemented through a structure which allows for equal (even if qualified) participation by all scheme creditors.

18 [2018] EWHC 2912. *Re Stripes US Holdings Inc* [2018] EWHC 2912 was considered in *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) which was cited with approval in *Re DSG Asia Holdings Pte Ltd* [2021] SGHC 209.

C. Fee payments to supportive creditors

30 In the course of restructuring negotiations, certain fees may be sought by a group of creditors – typically the steering committee or the *ad hoc* group in bond restructurings – who were involved in working out the restructuring plan with the company. Such fees can include:

(a) lock-up/consent fees: fees that are paid to incentivise creditors to execute lock-up agreements undertaking to vote in favour of the scheme when the same is formally proposed;

(b) work fees: fees that are paid to a creditor group for their involvement in their capacity as creditors in working out the restructuring plan;[19] and

(c) adviser fees: fees of the creditor group's advisers in relation to the restructuring negotiations.[20]

31 In *Re Brightoil Petroleum (S'pore) Pte Ltd*,[21] the Singapore court recognised the commercial justification of lock-up agreements, noting that such agreements reduce the risk that the proposed scheme will fall through due to it not being able to garner the necessary statutory majority support and can result in significant savings of time and costs if properly employed.[22]

32 Further, while the court noted that the presence of lock-up agreements was relevant to the issue of creditor classification in a scheme, it would not of itself require separate classification.[23] Rather, in determining whether locked-up creditors should be classed separately, the following non-exhaustive principles would be relevant:[24]

19 See the discussion in *Re NN2 Newco Ltd* [2019] EWHC 1917 at [46] and *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) at [64]–[67] and [93]–[100].
20 See the discussion in *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) at [69], [101] and [102].
21 [2022] SGHC 35.
22 *Re Brightoil Petroleum (S'pore) Pte Ltd* [2022] SGHC 35 at [44].
23 *Re Brightoil Petroleum (S'pore) Pte Ltd* [2022] SGHC 35 at [43] and [45].
24 *Re Brightoil Petroleum (S'pore) Pte Ltd* [2022] SGHC 35 at [46].

(a) Whether the benefit conferred (*eg*, consent fees payable) is so sizeable that it would have a significant influence on the decision of a reasonable creditor when voting for the proposed scheme (the "Immaterial Influence Requirement"). To this end, the court will consider the relative size of the benefit compared to the forecasted returns to creditors under the scheme and the estimated recovery in liquidation.

(b) The lock-up agreement must have been made available to all scheme creditors within the relevant class, and the agreements made with each creditor must be on substantially the same terms (the "General Offer Requirement").

(c) The use of the lock-up agreement must be done *bona fides*.[25]

33 Interestingly, while the English authorities generally consider both the Immaterial Influence Requirement and the General Offer Requirement in determining if the consent fee fractures the class, there appears to be some divergence on whether these requirements are to be assessed conjunctively (*ie*, satisfaction of both requirements necessary to not fracture the class) or disjunctively (*ie*, satisfaction of either requirements sufficient to not fracture the class).

34 The conjunctive approach was adopted by Snowden J in his recent decisions, *Re ColourOz Investment 2 LLC*[26] ("*ColourOz*") and *Re Port Finance Investment Ltd*.[27] Notably, in *ColourOz*, Snowden J stated:[28]

> The full implications of the practice of paying consent fees in this way have never been considered at an appellate level. However, a number of authorities at first instance indicate that in principle a consent fee of this nature will not fracture a class

25 It is unlikely that the court considered this as falling within the classification framework as its reasoning was that the court would not sanction a scheme where there is a lack of *bona fides* (which is relevant to the court's determination on whether to grant a convening application but not classification *per se*).
26 [2020] EWHC 1864 (Ch).
27 [2021] EWHC 378 (Ch).
28 *ColourOz Investment 2 LLC* [2020] EWHC 1864 (Ch) at [98].

> provided that it is made available to all scheme creditors, and provided also that it does not induce creditors to commit to vote in favour of a scheme which they might otherwise reject.

35 In contrast, the disjunctive approach was taken in *Re Codere Finance 2 (UK) Ltd*[29] where Falk J observed that the consent fee did not present a clear basis for fracturing the class as the fee was available to all noteholders and on that basis it could be argued that the scheme creditors were all treated in the same way.[30]

36 The conjunctive approach arguably imposes a higher standard than the classification test requires. In so far as the Immaterial Influence Requirement can be satisfied, it is difficult to understand why the General Offer Requirement should also be satisfied given that the test for classification looks solely at whether any difference in creditors' rights is so material that they cannot sensibly consult together with a view to their common interest.

37 Moreover, the English courts have not imposed a General Offer Requirement in relation to other types of fee payments such as work fees and backstop fees.[31] While consent fees do contain more of a "bounty" element compared to work fees and backstop fees, such considerations arguably relate more to questions of fairness and/or *bona fides*. Accordingly, any absence of a General Offer Requirement might be better considered in determining questions of fairness in the conduct of the meeting[32] rather than within the classification framework.

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29 [2020] EWHC 2441 (Ch).

30 *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) at [105]. While the Immaterial Influence Requirement was also considered, the analysis was treated as an alternative basis for the conclusion on classification.

31 See *In re Noble Group Ltd* [2019] Bus LR 947 ("*Noble*") at [142]–[149] and *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) ("*Codere*") at [89]–[91], [93]–[100] and [124] where work fees (*Codere*) and backstop fees (*Codere* and *Noble*) did not fracture the class solely on the basis that they were not sufficiently material to the decision on the scheme.

32 This is a relevant concern when considering a s 210(1) application: *Pathfinder Strategic Credit LP v Empire Capital Resources* [2019] 2 SLR 7 at [52].

IV. Strategic considerations for class composition

38 While the fragmentation of classes has traditionally been seen as an impediment to scheme implementation due to the increase in potential minority veto rights, it may be utilised as a strategic tool to implement the restructuring with the introduction of the cross class cram-down mechanism pursuant to s 70 of the Insolvency, Restructuring and Dissolution Act 2018.[33]

39 Under s 70, where there is a dissenting class or classes of creditors, the court may approve the scheme provided that, amongst others, approval thresholds are met in respect of at least one class of creditors. Accordingly, the existence of just one approving class opens the door to implementing the scheme through a cross class cram-down.

40 In fact, the deliberate fragmentation of classes is a strategy that is deployed in Chapter 11 proceedings (although to varying degrees of success). According to Bruce A Markell in his article "Clueless on Classification: Toward Removing Artificial Limits on Chapter 11 Claim Classification",[34] in 1984, when the United States Congress added section 1129(a)(10) (being the requirement that in a cram-down, at least one impaired class of non-insider creditors must accept the plan), "[r]ather than attempting to use classification to overwhelm dissenters, plan proponents began to use it to isolate support".

41 However, the potential deliberate fragmentation of classes reveals issues with blurring the rights/interests distinction in determining classification. Considering a factual pattern similar to *DSG*,[35] if a potential investor was allowed to be classed together with other unsecured creditors, the scheme could be denied sanction because the potential investor's votes would

33 2020 Rev Ed.

34 Bruce A Markell, "Clueless on Classification: Toward Removing Artificial Limits on Chapter 11 Claim Classification" (1995) 11 *Bankruptcy Developments Journal* 1 at 17.

35 Assuming a regular scheme is undertaken as the cross class cram-down mechanism is not available for pre-packaged schemes.

have been susceptible to being fully discounted on the basis that the potential investor was motivated by its special interest to disregard the interests of the class and vote in a self-centred manner.[36]

42 However, if the potential investor were placed in its own class, fair representation concerns would arguably no longer apply. Thus, even if the unsecured class did not approve the scheme, the company could still seek to implement the scheme through a cross class cram-down[37] as it would meet the threshold of an approving creditor class (*ie*, the potential investor).[38] While the court could still disregard the vote in the exercise of its broad discretion, absent any bad faith by the potential investor, doing so would beg the question why separate classification was necessary in the first place.

V. A proposed framework for determining relevant additional rights

43 In this author's view, the distinction between rights and interests should be strictly adhered to in order to enhance certainty on classification issues. In determining whether separate classification is required, the key question should be whether the rights given to the recipient creditor under the scheme in its capacity as a member of a particular class are the same as the rights given to other creditors in that class.

36 That is, the fair representation requirement. See *Wah Yuen Electrical Engineering v Singapore Cables Manufacturers* [2003] 3 SLR(R) 629 at [35] on the basis for discounting a related party vote.

37 As cross class cram-downs cannot be used for pre-packaged schemes, the time and cost saving of a pre-packaged scheme will have to be traded for the ability to utilise the value of a potential investor's creditor vote to procure scheme approval.

38 The scheme and/or any discrimination would arguably not be unfair if the potential investor was providing fair consideration for the acquisition.

44 To that end, additional rights should only be relevant if:

(a) they are given "under the scheme" in that they are commercially dependent on the implementation of the scheme;[39]

(b) they are received in the recipient creditor's capacity as a member of a particular class[40] in that they are received by virtue of that creditor's position as a member of a particular class; and

(c) only some creditors within the recipient creditor's class had an adequate opportunity to obtain these additional rights.[41]

45 Where it is alleged that all creditors within the recipient creditor's class had an adequate opportunity to obtain the additional rights, particular attention should be placed on whether there was adequate information provided to all the creditors[42] and whether sufficient time was given for the creditors to consider the information and determine whether to accept the additional rights.[43]

46 If there are relevant rights, their cumulative effect should then be assessed to determine whether they make it impossible for the recipient creditor to consult together with the other creditors of that class for the purpose of determining whether to approve the scheme such that separate classification is necessary.

47 To be clear, even if the additional rights are not relevant to classification, the impact of such rights on how the recipient creditors would vote should still be considered in assessing

39 See *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) at [52]–[54].
40 See *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) at [62].
41 See *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) at [105].
42 See *Re Sunbird Business Services Ltd* [2020] EWHC 2493 at [117].
43 See *Re Stripes US Holdings Inc* [2018] EWHC 2912 where the additional right to participate in the exit facility was open till the record date in the scheme. See also *Re Codere Finance 2 (UK) Ltd* [2020] EWHC 2441 (Ch) where the second consent fee was available till the business day before the sanction hearing and *Re Public Joint Stock Company Commercial Bank "Privatbank"* [2015] EWHC 3299 (Ch) where the consent fee was available till five days before the scheme meeting.

the fair representation requirement and the man of business requirement.[44] For example, even if consent fees satisfied the General Offer Requirement, if the fee quantum is significant, the court could take into consideration the hypothetical voting results if the votes of recipients of the fee were excluded in order to determine how much weight to attach to the statutory majority's opinion.

48 Concerns of hurdles faced by opposing creditors[45] may be addressed by:

(a) requiring that the scheme company include in the explanatory statement:

(i) the aggregate estimated recovery of each recipient creditor under the scheme and in a liquidation, taking into account the additional rights in question; and

(ii) the number and value of recipient creditor claims included in each class; and

(b) requiring that the chairman of the scheme meeting include in his or her report:

(i) the number and value of recipient creditor claims admitted in each class;

(ii) the votes submitted by each recipient creditor; and

(iii) the hypothetical voting results if each recipient creditor's votes are discounted in full.

49 Such information would apprise the court and creditors of the impact of the recipient creditors' votes on the voting results and the extent of the alleged differing motivations, thus allowing an opposing creditor to assess whether to challenge the sanction of the scheme.

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44 While the fair representation requirement is usually considered at the sanction stage, the court can express a view on whether a recipient creditor's votes should be discounted in full at the convening stage (as is the case with related party creditors).

45 As discussed at para 18 above.

VI. Conclusion

50 The existing scheme framework which gives the court discretion to discount creditors' votes at the sanction stage is sufficiently flexible for the court to adequately consider issues of differing creditor interests (and not rights) without having to shoehorn such considerations into the principles on classification.

51 Further, with the potential for improper gerrymandering of votes through the deliberate fragmentation of classes to utilise the cross class cram-down mechanism, it is essential for there to be clear guidelines on classification to protect the interests of minority creditors and the creditors as a whole.

52 More importantly, given that the proper classification of creditors goes towards the court's jurisdiction to sanction a scheme, it is crucial for there to be (if not a precise framework) certainty in navigating the rights/interests distinction. Incorrect classification of creditors can result in the scheme company having to restart the entire process[46] and, needless to say, neither the company nor its creditors would benefit from the additional delays and costs that a failed restructuring attempt (or a protracted dispute over classification issues) would involve.

46 In a pre-packaged scheme or if incorrect classification is found at the sanction stage.