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Cram-across: Sino-Ocean Restructuring Plan Makes Waves

The evolution of the English RP continues to push the jurisdictional envelope.

The English court's sanction of the Sino-Ocean restructuring plan[1] (RP) marks an interesting development in the evolution of the English RP. The court permitted the cramdown of English law-governed liabilities by a class of *pari passu* creditors whose debts were not English law-governed, while allowing the existing shareholders to retain a material shareholding. This may become a model for heavily indebted PRC property groups wishing to restructure their English law debts, including in situations when it is commercially justifiable for state-owned enterprises (SOEs) to remain as significant shareholders.

English RP and Parallel Hong Kong Scheme

The Chinese property development group proposed a RP through its Hong Kong-incorporated and -listed holding company. The RP's purpose was to reduce the group's circa US$6 billion unsecured liabilities, comprising Hong Kong law-governed syndicated bank debt and English law-governed notes. The maturity dates for several of the series of notes had already passed, and one of the noteholders had presented a winding-up petition in Hong Kong.

The restructuring was to be effected by an English RP (for all affected creditors) and a parallel Hong Kong scheme of arrangement (for only the Hong Kong law-governed creditors).[2] The company argued that the Hong Kong scheme was necessary because Hong Kong law followed the Rule in *Gibbs*, meaning that only a Hong Kong process (such as a scheme) would be effective to compromise the Hong Kong law-governed debt.

Pari Passu, but Different Treatment

The RP proposed four creditor classes. Although each plan creditor was unsecured and notionally *pari passu*, the differing credit support packages between the different debt instruments gave materially different levels of recourse to the Sino-Ocean group and varying recoveries in the relevant alternative of a group-wide insolvency. This was reflected in the consideration offered to the plan classes under the RP: the amount of new loans, mandatory convertible bonds or new perpetual securities newly issued under the terms of the RP were weighted so as to give Class A creditors (the Hong Kong law-governed syndicated bank debt) a greater share than Class B creditors (English law-governed notes whose recovery in the relevant alternative would be less than Class A but greater than Classes C and D), and smaller portions to Class C and Class D.

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The RP was approved by Class A and Class C creditors in the required statutory majorities, but not by the Class B and Class D creditors. The company requested that the court exercise its discretion to cram down the two dissenting classes and sanction the RP.

Grounds of Opposition

A creditor, holding debt in each of Class B, C, and D, opposed sanction of the RP, arguing that:

1. The inclusion of Class A creditors within the RP was unnecessary because those liabilities would be adequately compromised by the Hong Kong scheme alone. The only reason for their inclusion within the RP was to create an approving in-the-money class to engage the English court's power to cram down the dissenting classes.

2. The apportionment of the so-called "restructuring surplus" was unfair because existing shareholders, whose equity stake was valueless in the relevant alternative, retained a significant proportion of the group's restructured equity.

3. The approval of the RP by Class C creditors was achieved only by allowing the votes of creditors related to the shareholders of the group, who were influenced more by the retention of shareholder equity than the interests of Class C creditors.

The judge rejected each of these objections.

Good Forum-Shopping

The inclusion of the Class A creditors as an assenting class contained "no whiff of impermissible forum-shopping". The restructuring should be seen in its entirety: the company would not have sought to compromise the Hong Kong debt in isolation, but only as part of an overall plan to compromise all its unsecured liabilities whatever their governing law might be. The Hong Kong scheme was necessary because not all Class A creditors had participated in the English RP, and so could not be said to have submitted to the jurisdiction of the English court for the purposes of the Hong Kong *Gibbs* analysis.

Shareholder Retention of Equity Justified

The retention by two SOE shareholders of a minimum combined shareholding of circa 30% of the restructured equity was permissible if there was a "rational commercial justification". The company argued that the commercial benefits for creditors and the company of the SOE shareholders retaining their equity in the domestic Chinese market far outweighed any benefit that creditors would otherwise receive through receiving more mandatory convertible bonds. In fact, the greater risk for creditors and the company was to lose the commercial advantages of having SOE shareholders. It was argued that these advantages facilitated, for example, discussions with local governments in relation to planning matters and, more importantly, created a perception in the debt markets of being lower risk than a privately owned entity. The court agreed that this provided a rational commercial justification. Despite making no direct economic contribution to the restructuring, it was justified for those shareholders to retain substantial equity in the company post-restructuring because of the negative effects for plan creditors as a whole which would result from the group becoming privately owned, and because of the perceived positive effect on the valuation of the new debt and equity instruments issued to all creditors under the RP.

Treatment of Shareholder-affiliated Creditors

Because the court found that the Class A creditors formed a legitimate assenting creditor class for the purposes of cross-class cramdown, it did not need to address the question of whether the Class C creditors had properly assented in light of the opposing creditor's argument that shareholder-related creditors should be discounted. However, the court found that the regulated investment manager as creditor (a joint venture between an affiliate of the SOE shareholder and a third party) had not been influenced by the interests of the SOE shareholder.

Further, there was no need to include the shareholders as a separate additional class within the RP. Although there was an argument that shareholders would be "affected" by the plan because its effect was to dilute them through the issuance to plan creditors of mandatory convertible bonds and equity-like perpetual securities, they had already voluntarily approved the issuance of those instruments under Hong Kong company law by a shareholder resolution in an EGM.

English RP Facilitates "Cram-across"

The relative ease with which the English court has been able to sanction the RP to compromise predominantly English law-governed unsecured debts will have been closely watched by similarly placed PRC developer companies- with over-levered balance sheets in the real estate sector.

This has been called a "cram-across" due to the *pari passu* ranking of each affected creditor class, and is the first of its kind to be approved by the English court. It might be observed that the English court has a potentially boundless jurisdiction within which borrowers with debts governed by the laws of *Gibbs*-friendly jurisdictions appear to have considerable latitude to manoeuvre. The sanction hearing for the Hong Kong scheme is due to be held later in February. If sanctioned, the restructuring will become effective upon satisfaction of other restructuring conditions.

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Endnotes

[1] *Re Sino-Ocean Group Holding Limited* [2025] EWHC 205 (Ch).

[2] In some ways, this mirrored the approach taken in *Re Hong Kong Airlines Ltd.* [2022] EWHC 3210 (Ch) (in which Latham acted for the debtor) albeit, in that case, there was no class of debt governed solely by Hong Kong law and no cross-class cramdown was ultimately required.