IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 17

Court of Appeal / Civil Appeal No 54 of 2024

Between

UT Singapore Services Pte Ltd

… *Appellant*

And

(1) Goh Thien Phong
(2) Chan Kheng Tek
(3) Hin Leong Trading (Pte) Ltd
(in compulsory liquidation)

… *Respondents*

In the matter of Originating Application No 726 of 2024

In the matter of Section 210 of the Companies Act 1967

(1) Goh Thien Phong
(2) Chan Kheng Tek
(3) Hin Leong Trading (Pte) Ltd
(in compulsory liquidation)

… *Applicants*

Court of Appeal / Civil Appeal No 55 of 2024

Between

UT Singapore Services Pte Ltd

… *Appellant*

And

(1) Hin Leong Trading (Pte) Ltd
(in compulsory liquidation)
(2) Goh Thien Phong
(3) Chan Kheng Tek
Hin Leong Trading (Pte) Ltd
(in compulsory liquidation)

… *Respondents*

In the matter of Originating Application No 555 of 2024 (Summons No 1957 of 2024)

In the matter of Section 210 of the Companies Act 1967

(1) Hin Leong Trading (Pte) Ltd
(in compulsory liquidation)
(2) Goh Thien Phong
(3) Chan Kheng Tek

… *Applicants*

JUDGMENT

[Companies — Schemes of Arrangement]

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UT Singapore Services Pte Ltd
v
Goh Thien Phong and others and another appeal

[2025] SGCA 17

Court of Appeal — Civil Appeals Nos 54 and 55 of 2024
Sundaresh Menon CJ, Steven Chong JCA and Kannan Ramesh JAD
24 January 2025

21 April 2025 Judgment reserved.

Kannan Ramesh JAD (delivering the judgment of the court):

Introduction

1 The classification of creditors is a crucial element in a scheme of arrangement. While the rules on classification are settled and clear, often it is the application of those rules that raises questions. However, getting the classification right is imperative as it goes to the court's jurisdiction to sanction a scheme. This is for good reason. In a scheme, the majority of creditors or of a class of creditors seek to cram down and bind minority dissentients to the rights proposed under the scheme in substitution of their existing rights against the debtor. For this compulsion to be justifiable, each class of creditors must be bound by a common interest arising from a similarity of rights that enables them to sensibly consult with each other and decide on how best they should exercise their vote. To cram down where the creditors are unable to sensibly consult as

a group because of a dissimilarity of rights would be to unfairly prejudice the minority dissentients.

2 How then should the question of symmetry of rights for the purpose of classification be approached where creditor rights are *uncertain* and *unresolved*? Typically, for the purpose of classification, creditor rights are certain and undisputed or, where they are not, resolved through a fair and appropriate adjudication mechanism provided for in the scheme. Where the rights are uncertain and disputed, is it permissible to classify such creditors in a single class without first resolving their rights summarily? This is the principal issue in the present appeals which concern a scheme of arrangement proposed by the liquidators of a debtor in compulsory liquidation. Under the scheme, an interim dividend distribution is proposed to be made to a class of creditors, classified on the basis that each has a *disputed* claim to a security interest over the assets of the debtor that is pending before the court, without any attempt to first determine the claims summarily. Without resolving the dispute over the claims, classifying such creditors in a single class: (a) carries the risk of pooling creditors who may not be secured with creditors who are; and (b) treats the secured creditors as equal in priority when that may not in fact be the case. Is classification on this basis permissible? Is the fact that the scheme is proposed in a compulsory liquidation to resolve the disputes in a cost efficient and expeditious manner for the estate and the creditors a relevant consideration in the assessment? These are some of the key questions that arise for consideration. As the present appeals demonstrate, the difficulty lies in delineating the approach one should take to assess whether the creditors have a symmetry of rights in such circumstances.

3 Alongside the principal issue are two ancillary issues. First, whether the appellant, UT Singapore Services Pte Ltd ("UTSS"), was prohibited from

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raising its objections to the classification of creditors at the sanction hearing because it failed to do so at the convening hearing, without good reason. Second, whether the liquidators had made adequate disclosure to the creditors when presenting the proposed scheme.

4 In *Re Hin Leong Trading (Pte) Ltd (in compulsory liquidation) and another matter* [2024] SGHC 256 (the "GD"), a Judge of the General Division of the High Court (the "Judge") found on the principal issue that the creditors with a claim to secured interest were properly classified in a single class. The Judge also found that: (a) UTSS was prohibited from raising the classification issue at the sanction hearing because it failed, without good reason, to do so at the convening hearing; and (b) the liquidators had made adequate disclosure. Dissatisfied, UTSS appeals against the whole of the Judge's decision.

5 Having considered the parties' submissions, we allow the present appeals in part. Pertinently, we: (a) affirm the decision below that the scheme in question was appropriately classified and ought to be sanctioned and that the liquidators had made adequate disclosure; and (b) allow the appeals on the first ancillary issue, being of the view that UTSS was not prohibited from raising the classification issue at the sanction hearing, subject to the question of costs. We now provide our reasons and begin by recounting the salient facts.

Facts

6 The present appeals arise from the well-known failure of Hin Leong Trading (Pte) Ltd ("Hin Leong") and its related entities, which are in liquidation. Hin Leong was compulsorily wound up on 8 March 2021, and Mr Goh Thien Phong ("Mr Goh") and Mr Chan Kheng Tek ("Mr Chan") (collectively the "Liquidators") were appointed as its liquidators. Prior to this, Hin Leong was placed under interim judicial management and judicial

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management on 27 April 2020 and 7 August 2020, respectively. The Liquidators were previously Hin Leong's interim judicial managers and judicial managers.

7 The appellant is UTSS and the respondents are Hin Leong and the Liquidators. Hin Leong was a company primarily engaged in the business of oil trading. UTSS operates a petroleum storage facility. Between December 2018 and April 2020, Hin Leong and UTSS entered into various Tankage and Storage Agreements and spot contracts (collectively, the "Storage Agreements") which incorporated UTSS's "Tankage and Storage: General Terms and Conditions".

8 Oil purchased by Hin Leong would be delivered by ships or through inter-tank transfers at the oil storage terminals operated by UTSS. The purchase was financed by various import financing and inventory financing agreements with several banks (the "Financing Banks"). Following delivery, Hin Leong would either store, sell or blend the oil in a variety of ways. Some of the oil would be discharged into the following storage facilities: (a) tanks of UTSS; (b) tanks of a related entity, Ocean Tankers (Pte) Ltd ("Ocean Tankers"); (c) ships chartered by Hin Leong and operated as floating storage units; and (d) ships controlled by Ocean Tankers.

Disputes over the oil purportedly owned by Hin Leong

9 When Hin Leong was placed under interim judicial management, some of the oil that purportedly belonged to Hin Leong became the subject of interpleader proceedings (the "Interpleader Proceedings"). The details of the Interpleader Proceedings are briefly set out below:

(a) HC/OS 489/2020 (the "UTSS Interpleader") is an interpleader proceeding commenced by UTSS on 22 May 2020 to seek relief in respect of various third parties' assertions of ownership and/or security

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claims over the oil stored in some of UTSS's storage facilities (*ie*, the "UTSS Disputed Tanks"). The oil stored in these storage facilities was also subject to various court injunctions. The oil was eventually discharged and sold by UTSS, and the sale proceeds paid into court pending determination of the UTSS Interpleader.

(b) HC/OS 549/2020, HC/OS 593/2020, HC/OS 616/2020 and HC/OS 631/2020 (collectively, the "Ocean Tankers Interpleaders") are interpleader proceedings commenced by the interim judicial managers of Ocean Tankers between 10 June 2020 and 29 June 2020 to resolve competing claims in respect of the oil stored in the vessels controlled by Ocean Tankers. The oil in question was sold and the sale proceeds paid into court pending determination of the Ocean Tankers Interpleaders.

10 On 20 May 2020, UTSS issued a notice of termination of the Storage Agreements. Among other things, UTSS demanded: (a) the sum of S$26,673,150 as "compensation" for Hin Leong's early termination of the Storage Agreements (on the basis of Hin Leong's insolvency) (the "Termination Sum"); and (b) various outstanding storage fees in the sum of S$8,712,681 (the "Storage Fees"). UTSS has claimed a further sum of approximately S$2.8m (as of 10 July 2020) as storage fees for the oil stored in the tanks which were subject to injunctions (the "Injuncted Tanks"). UTSS claimed that such storage fees would continue to accrue until Hin Leong returned possession of the Injuncted Tanks to UTSS.

11 On 27 May 2020, UTSS and the interim judicial managers of Hin Leong entered into an agreement for: (a) various empty storage tanks to be returned to UTSS (the "Empty Tanks"); (b) the oil remaining in 15 tanks (the "Filled Tanks"), which were not the subject of injunctions, to be consolidated in order

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to reduce the number of storage tanks that were being leased; and (c) the oil in the Filled Tanks to be sold. The sale of the oil in the Filled Tanks resulted in net proceeds of US$42.2m (the "Filled Tanks Proceeds") after part payment of the storage fees owed to UTSS. Other oil cargo that was not subject to the Interpleader Proceedings and injunctions were also sold. According to the respondents, the proceeds of sale thereof and the Filled Tank Proceeds totalled US$88.3m (the "Uninjuncted Proceeds"). UTSS disputes this on appeal and takes the position that the Uninjuncted Proceeds are more than US$88.3m.

12 Accordingly, UTSS asserts that: (a) it had a general lien over all the oil that was stored in the Filled Tanks pursuant to the Storage Agreements; and (b) it was entitled to a general lien over the Filled Tanks Proceeds (and therefore in the Uninjuncted Proceeds in so far as the Filled Tanks Proceeds formed a part of it) in priority to all security interests to satisfy its claims for the Termination Sum and the Storage Fees.

13 UTSS is not the only creditor alleging a security interest over the Uninjuncted Proceeds. The Financing Banks assert that pursuant to the terms of the respective financing agreements, security interests were created over the oil in question and the Uninjuncted Proceeds.

14 In view of the competing claims over the Uninjuncted Proceeds, on 31 August 2021, the Liquidators filed HC/SUM 4108/2021 ("SUM 4108") seeking directions on the validity of the security interests that were asserted by UTSS and the Financing Banks. On 7 February 2022, the court directed the Liquidators to consider filing a separate application for directions pertaining to UTSS's claims. The Liquidators did this on 14 March 2022 with HC/SUM 1003/2022 ("SUM 1003").

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15 In SUM 4108, the Liquidators sought determination of whether the Financing Banks possessed valid securities over the oil in question and the proceeds of sale thereof. Specifically, whether: (a) the financing under the import financing or inventory financing agreements was capable of creating a "pledge by attornment" in favour of the Financing Banks; and (b) whether such "pledge by attornment" (if valid) was a security interest registrable as a charge under s 131(3)(*d*) of the Companies Act 1967 (2020 Rev Ed) (the "Companies Act") before it could be enforceable.

16 In SUM 1003, the Liquidators sought declarations that: (a) UTSS was not entitled to the Termination Sum; (b) further or alternatively, UTSS was not entitled to exercise a lien over the oil stored as of 27 April 2020 in the Filled Tanks to satisfy the Termination Sum; and (c) UTSS was not entitled to exercise a lien over the oil stored as of 27April 2020 in the Filled Tanks to satisfy the Storage Fees.

17 The Interpleader Proceedings, SUM 4108 and SUM 1003 are pending before the court.

The proposed scheme of arrangement

18 On 17 May 2024, the Liquidators proposed a scheme of arrangement (the "Scheme") at a creditors' dialogue session (the "17 May Dialogue Session"). The Scheme sought to distribute US$80m of the Uninjuncted Proceeds (the "Scheme Consideration") to the "Scheme Creditors" who were defined as any person who held a claim against Hin Leong including any interest accruing on and calculated as at 8 March 2021.

19 Two voting classes were contemplated under the Scheme:

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(a) The "Potential Secured Creditors Class" comprised Scheme Creditors who asserted a security interest over the Uninjuncted Proceeds (the "Potential Secured Creditors"). The validity of the claimed security interests was the subject of the Interpleader Proceedings and/or the related applications. The Potential Secured Creditors Class consisted of UTSS and the Financing Banks.

(b) The "Unsecured Creditors Class" comprised Scheme Creditors who did not assert any security interest over the Uninjuncted Proceeds (the "Unsecured Creditors").

20 The Scheme provided for all Potential Secured Creditors to irrevocably and irreversibly waive any security interests they might have over the Uninjuncted Proceeds. Additionally, the Scheme Consideration was to be distributed to all the Scheme Creditors on a *pari passu* basis in respect of their respective claims (which had been admitted by the chairpersons), calculated in accordance with a formula provided for in the Scheme.

21 In so far as the Potential Secured Creditors were concerned, the rationale for the Scheme was explained in the following terms. As their claims to security interests were disputed and were yet to be determined by the court in the Interpleader Proceedings and related applications, the recoveries thereto were uncertain. Absent the Scheme, any distribution of the Scheme Consideration was only possible after the full and final determination of the Interpleader Proceedings and related applications.

22 On 6 June 2024, the Liquidators applied in HC/OA 555/2024 ("OA 555") for leave to convene a scheme meeting for the Scheme Creditors to consider and, if they thought fit, approve the Scheme. The Liquidators

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circulated a copy of OA 555, a draft explanatory statement and the proposed scheme timelines to the Scheme Creditors. By this time, the Scheme had obtained in-principal approval from: (a) 15 out of 25 in number of the Potential Secured Creditors Class (representing 55% in value); and (b) 19 out of 125 in number of the Unsecured Creditors Class (representing 87% in value). None of those creditors had raised any objections to the classification in the Scheme. Notably, UTSS had not engaged with the Liquidators on the Scheme at that stage.

23 On 14 June 2024, the court directed that any creditor who wished to file a reply affidavit in OA 555 was to do so by 21 June 2024 and to attend a case conference on 25 June 2024 to take directions on the matter. At the case conference, the court gave directions for any party who wished to file written submissions in respect of OA 555 to do so by 28 June 2024 and fixed the hearing of the application for 1 July 2024. A notice of these directions was provided to all the Scheme Creditors on the same day.

24 On 1 July 2024, the Judge granted leave to convene the scheme meeting (the "Convening Order") and approved the proposed timelines in respect of the Scheme. Although UTSS attended the convening hearing, it did not raise any objection to the classification in the Scheme. The scheme creditors' meeting was to be convened on 22 July 2024. On 5 July 2024, the Liquidators circulated the Scheme document to all Scheme Creditors.

25 On 10 July 2024, for the first time, UTSS raised objections on classification with the Liquidators. UTSS sought: (a) a reclassification of UTSS into a class of its own for the purpose of voting on the Scheme; or (b) a reduction in the Scheme Consideration by a sum of S$58,220,683. UTSS's request was rejected.

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26 On 15 July 2024, UTSS applied in HC/SUM 1957/2024 ("SUM 1957") to: (a) set aside the Convening Order; (b) reclassify UTSS for the purpose of voting on the Scheme or reduce the Scheme Consideration by US$42.4m (being the Filled Tanks Proceeds over which it claimed a lien); and (c) defer the creditors' meeting until after the determination of SUM 1957, among other things. SUM 1957 was heard on 17 July 2024. The Judge allowed the creditors' meeting to proceed but adjourned the remaining prayers to be heard with the application for sanction of the Scheme, in the event the Scheme was approved with the requisite majority.

27 At the creditors' meeting on 22 July 2024, the Scheme was approved by 95.7% of the Scheme Creditors from the Potential Secured Creditors Class (representing 98.7% in value), and 100% of the Scheme Creditors from the Unsecured Creditors Class, present and voting. UTSS was the only creditor who voted against the Scheme.

28 On 25 July 2024, the Liquidators applied for sanction of the Scheme in HC/OA 726/2024 ("OA 726"). On 30 August 2024, the Judge sanctioned the Scheme and dismissed the remaining prayers in SUM 1957.

29 On 17 September 2024, UTSS appealed the whole of the Judge's decision in respect of OA 726 and SUM 1957 in CA/CA 54/2024 ("CA 54") and CA/CA 55/2024 ("CA 55") respectively.

The decision below

30 Three issues were raised in OA 726. First, the parties disagreed on whether the court could and should consider UTSS's classification objections at the sanction hearing. While UTSS submitted that classification issues went towards the court's jurisdiction to sanction the Scheme and that UTSS had good

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reasons for not raising its objections earlier, the respondents' position was that UTSS was not entitled to challenge the classification under the Scheme as those objections could and should have been raised at the convening hearing, and UTSS had not provided any legitimate explanation for failing to do so.

31 Second, the parties disagreed on the classification under the Scheme. UTSS's position was that the Potential Secured Creditors could not be properly classified without first determining their security claims. In any event, UTSS's rights were so dissimilar from the other Potential Secured Creditors that it could not be placed in the same class. The respondents submitted that it was legitimate for the Liquidators to propose a scheme classifying creditors according to their potential rights and that UTSS fell squarely within the Potential Secured Creditors Class.

32 Third, the parties were divided on whether the Liquidators had fallen short of their disclosure obligations. Three grounds were raised in UTSS's written submissions. However, none of the grounds was pursued before the Judge. Instead, UTSS submitted that the Liquidators: (a) should explain why they no longer sought to pursue the full and final determination of the related applications (*ie*, SUM 4108 and SUM 1003); and (b) should have disclosed to the creditors what the Potential Secured Creditors were giving up by waiving their security rights. UTSS also submitted that the Liquidators fell short of their disclosure obligations to the Scheme Creditors as they did not disclose any information about the total amount of Uninjuncted Proceeds. This was compounded by the Liquidators' intention to use the balance of the Uninjuncted Proceeds to pay their fees and that of their lawyers. The Liquidators disputed these allegations and submitted that they had made adequate disclosure.

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33 As for SUM 1957, UTSS submitted that if its classification objections were accepted, the Convening Order should be set aside and SUM 1957 allowed.

34 Several of the Financing Banks also tendered written submissions before the Judge. Oversea-Chinese Banking Corporation Limited ("OCBC") took the position that sanction should be granted. OCBC submitted that: (a) the relevant comparator was not insolvent liquidation as Hin Leong was already in liquidation; (b) there was no need for the claims to security interest to be determined for the purpose of classification; and (c) there was no basis for UTSS to be in a separate class of its own. Coöperatieve Rabobank U.A., Singapore Branch similarly submitted that it was appropriate to classify UTSS in the Potential Secured Creditors Class.

35 The Judge held that creditors might only raise classification objections at the sanction hearing if there was a good explanation why they had not raised them earlier (see GD at [33]). Where there was no good explanation, the court was not required to consider the objections at the sanction hearing (at [38]). As UTSS did not have a good explanation, there was no need to revisit the issue of classification at the sanction hearing in this case (at [40]–[43]).

36 Nonetheless, the Judge considered UTSS's classification objections. The Judge held that the "appropriate comparator" was not insolvent liquidation. Instead, it was "proceeding with a determination of security claims, with all the time, trouble, and expense that entailed" (at [60(a)]). Applying this, UTSS's rights were not so dissimilar to the other Potential Secured Creditors' rights to require it to be placed in a separate class. Even if UTSS had a better claim than the other Potential Secured Creditors, the Liquidators were entitled to adopt a "fairly robust" approach and classify creditors in a "broad and objective

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manner" (at [62]–[64]). The Judge found that the Scheme was reasonable and, in view of the substantial majority vote in favour of the Scheme, it was one which a man of business or an intelligent and honest man, being a member of the class concerned and acting in respect of his interest, would reasonably approve (at [67]–[68]).

37 The Judge also held that UTSS's complaints regarding inadequate disclosure were unmeritorious (at [46] and [49]–[54]). The Judge thus sanctioned the Scheme. As SUM 1957 dealt with primarily the same objections raised by UTSS at the sanction hearing, the Judge also dismissed the remaining prayers therein (at [70]).

The parties' cases on appeal

38 The parties' arguments on appeal largely mirror their arguments below. We set out the parties' submissions in broad strokes, before dealing with them specifically in this judgment when we consider the issues.

The appellant's case

39 UTSS submits that the Judge erred in holding that the court did not need to consider its classification objections. The court has no power to sanction a scheme unless the classes are properly constituted. An objecting creditor's failure to raise classification issues at the convening hearing without good reason should at most result in cost consequences. In any event, UTSS challenges the Judge's finding that it did not have a good reason or explanation for failing to raise its objections earlier.

40 UTSS also objects to the classification of creditors under the Scheme. It contends that contrary to the Judge's conclusion, the appropriate comparator is

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an insolvent liquidation, and the classes of creditors under the Scheme were improperly constituted. UTSS's arguments can be distilled into two main points. First, classifying creditors with undetermined security interests in a single class is impermissible. There must be an attempt to assess their claims for the purpose of classification. The fact that the Potential Secured Creditors all assert security interests against Hin Leong does not mean that they have the same rights. Given the limited amount of Uninjuncted Proceeds as compared to the large amount of purported secured debts, some of the Potential Secured Creditors must be unsecured creditors. This makes placing all the Potential Secured Creditors in a single class inappropriate. While it may be possible in an appropriate case for a scheme to place creditors with uncertain claims in a single class, it is crucial that the scheme provides for a claims determination mechanism for those claims. Second, even if it is possible to have a Potential Secured Creditors Class, UTSS should be placed in a separate class of its own from the Financing Banks. UTSS has clearly established a security interest over the Filled Tanks Proceeds, whereas the Financing Banks have not established any security interest over any of Hin Leong's assets, let alone the Uninjuncted Proceeds.

41 UTSS further contends that the Scheme is not one which a man of business or an intelligent and honest man would reasonably approve for various reasons. First, it is not a rational compromise. Second, the Liquidators have a conflict of interest because the difference between the Scheme Consideration and the true value of the Uninjuncted Proceeds is earmarked for the Liquidators' fees. Third, the scheme documents ought to have disclosed the real difference between the Scheme Consideration and the true value of the Uninjuncted Proceeds. The Uninjuncted Proceeds are in fact more than the disclosed US$88.3m.

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42 Arising from the second and third points above (at [41]), UTSS challenges the sufficiency of the Liquidators' disclosure of information to the creditors. The Potential Secured Creditors could not exercise their voting rights meaningfully without knowing the quantum of the Uninjuncted Proceeds and the full details of the Liquidators' financial incentives.

The respondents' case

43 The respondents defend the Judge's decision not to consider UTSS's classification objections at the sanction hearing because it had not provided a good reason or explanation for not raising the objections earlier.

44 The respondents submit that the classification of creditors is correct. The Judge did not err in finding that the appropriate comparator was not an insolvent liquidation and that it was instead a situation where all the Potential Secured Creditors would need to proceed with a costly, time-consuming and uncertain determination exercise to establish their purported security rights. As all the Potential Secured Creditors assert contingent or potential security rights over the Uninjuncted Proceeds, they are in similar positions. Further, it is unnecessary to provide for a mechanism to determine the claims for the purpose of classification. At the hearing before us, the respondents also argued that it was not possible to undertake a summary determination of the creditors' rights given the complexity of the Potential Secured Creditors' claims. In any event, UTSS has not established that it has a security interest that is superior to the other Potential Secured Creditors to warrant a separate classification.

45 As the Scheme had received overwhelming support from the Scheme Creditors, who were large reputable financial institutions, it is one which a man of business or an intelligent and honest man would reasonably approve.

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46 Finally, the respondents contend that UTSS's complaints on the adequacy of disclosure are unmeritorious. The allegations on conflict of interest and personal gain are raised for the first time on appeal and should not be permitted. In any event, it is incorrect to claim that the Liquidators did not disclose the total amount of Uninjuncted Proceeds. It is evident that the amount is US$88.3m.

Issues to be determined

47 Two broad categories of issues arise for consideration in the present appeals:

(a) First, whether the court should consider UTSS's objections on the classification of creditors raised at the sanction hearing, even though it had the opportunity to and did not raise the objections earlier.

(b) Second, whether the court should sanction the Scheme. There are three sub-issues in this regard:

(i) whether the classification of creditors under the Scheme is appropriate;

(ii) whether the Scheme is one which a man of business or an intelligent and honest man would reasonably approve; and

(iii) whether there was sufficient disclosure by the Liquidators.

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The scheme of arrangement regime

48 It is helpful to first outline the scheme of arrangement process. The scheme of arrangement regime is primarily governed by s 210 of the Companies Act. Section 210 states that:

> **Power to compromise with creditors and members**
>
> **210.**—(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 in a summary way of the company or of any creditor or member of the company, or, in the case of a company 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 to be summoned in such manner as the Court directs.

49 The process for a scheme of arrangement was previously canvassed by this court in *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 2 SLR 213 ("*TT International*"). The process comprises three distinct stages.

50 The first stage concerns an *ex parte* application for a meeting of all creditors or meetings of various classes of creditors to approve the scheme (the "convening stage"), pursuant to s 210(1) of the Companies Act. The court may allow the application and order a meeting or meetings to be summoned in such a manner as the court directs.

51 After the court issues directions for the classification of the creditors, notices summoning the meeting(s), accompanied by an explanatory statement in accordance with s 211 of the Companies Act, must be sent to the creditors (*TT International* at [65]). Thereafter, the proposed scheme creditors are required to submit their proofs of debt together with any supporting documents to the chairman of the meeting(s) for his adjudication. The chairman has the

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responsibility of undertaking the quasi-judicial task of adjudicating disputes as to the voting rights of anyone claiming to be a creditor (*TT International* at [66]–[67]).

52 The second stage involves the conduct of the creditors' meeting(s). As summarised in *TT International* in relation to s 210(3) of the Companies Act (Cap 50, 2006 Rev Ed) (which is equivalent to s 210(3AA)–(3AB) of the Companies Act) (at [69]):

> … if the proposed scheme is accepted (within each designated class, if any), by a majority in number of creditors (present and voting) who hold at least 75% of the total debts owed by the company (to the respective designated classes, if any), the proposed scheme can proceed to the third stage.

53 The third stage entails an application to the court for the scheme to be sanctioned (the "sanction stage"). If the court grants an order approving the scheme, and that order is lodged with the Registrar of Companies and Businesses, the scheme becomes binding on all parties (*TT International* at [70]; s 210(5) of the Companies Act). With that, we turn to address the issues.

Whether the court should consider UTSS's classification objections at the sanction hearing

54 UTSS contends that the Judge was obliged to consider the objections as to classification at the sanction hearing because that is a matter that goes to the jurisdiction of the court to sanction the Scheme. The failure to offer a good reason for not raising the objections is a matter that is pertinent to costs. In any event, UTSS had good reasons for not raising the objections earlier.

55 In our view, the issue turns on whether the classification of creditors is a matter that goes to the jurisdiction of the court to sanction a scheme of arrangement. If it is, it must follow that the Court is obliged to consider any

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objections on the classification of creditors at the sanction hearing, regardless of whether the objecting creditor had a good reason for failing to raise it earlier whether that be at the convening hearing or otherwise.

56 The settled position is that the appropriate classification of creditors goes to the heart of the court's jurisdiction to sanction a scheme. In *TT International*, this court stated that the classification of creditors according to their separate interests was not just a matter of form, and that "[i]f the scheme creditors' meeting(s) are not properly conducted, the court has no jurisdiction to sanction the proposed scheme" (*TT International* at [58]).

57 The position stated in *TT International* echoes the position in England on s 425(2) of the Companies Act 1985 (c 6) (UK) (the "UK Companies Act 1985") (which has since been replaced by s 899(1) of the UK Companies Act 2006 (c 46) (the "UK Companies Act 2006")). Section 425(2) of the UK Companies Act 1985 is *in pari materia* with s 210(3AB) of the Companies Act. In *Re Hawk Insurance Co Ltd* [2002] BCC 300 ("*Re Hawk Insurance*"), the court's jurisdiction under s 425(2) to sanction a scheme of arrangement was considered by the English Court of Appeal. The court expressed the view that the court's jurisdiction was limited to sanctioning a compromise or arrangement between the company and its creditors or any class of creditors (as the case may be) which has been approved by the requisite majority at a meeting of the creditors or that class of creditors (as the case may be) (*Re Hawk Insurance* at [17]). Therefore, if the classification of creditors is found to be incorrect at the sanction stage, "the court will find that the condition which gives rise to its power to sanction is absent" as "none of the linked compromises or arrangements will have been approved by the requisite majority at a relevant meeting because there have been no meetings of the distinct classes" (*Re Hawk Insurance* at [17]).

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58 Other English cases have expressed the same view. In *Re Smile Telecoms Holdings Ltd and another* [2022] Bus LR 591 ("*Smile Telecoms*"), the High Court of England and Wales observed that "[q]uestions of class composition have continued to be regarded as going to the jurisdiction of the court to sanction schemes under the revised wording of Part 26 of the [UK Companies Act 2006]" (at [47]). A similar view was expressed in *Re DX Holdings Ltd and other companies* [2010] EWHC 1513(Ch) ("*DX Holdings*") where the court observed that as no creditors objected to the classification of creditors at the convening stage, it would be "regrettable" if creditors asked the court to make a different value judgment at the sanction stage. However, "their default of appearance cannot confer jurisdiction where none existed before" (at [9]).

59 Academic commentaries are also of the same voice. In *The Law and Practice of Restructuring in the UK and US* (Christopher Mallon *et al* eds) (Oxford University Press, 2nd Ed, 2017) at para 6.99, the following was stated:

> … The jurisdiction of the court to sanction a scheme of arrangement is confined to sanctioning a scheme approved by the class or classes summoned. If a single meeting convened to consider a scheme in fact comprises two or more classes, the court is without jurisdiction regardless of whether or not the meeting voted unanimously in favour of the scheme.

The same view was expressed in *Goode on Principles of Corporate Insolvency Law* (Kristin van Zwieten gen ed) (Sweet & Maxwell, 5th Ed, 2018) at para 12-19.

60 It is therefore clear that issues of class composition go towards the court's jurisdiction to sanction the scheme. The court should therefore consider and determine any objections in relation to the classification of creditors at the sanction hearing, even if it should have been raised earlier. What then is the

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consequence of not raising the objections earlier, without good reason? We turn to consider this next.

The consequence of not raising the classification objections earlier

61 Prior to *TT International*, there was no clear local authority on whether the court should entertain objections regarding the classification of creditors at the convening stage. Two contrasting approaches were open for adoption. The first was the approach in the English Practice Statement (Companies: Scheme of Arrangement) [2002] 1 WLR 1345 (the "2002 Practice Statement") that the court will consider whether more than one meeting of creditors is required and the appropriate composition of those meetings at the convening stage. The other was Lord Millett NPJ's view in *UDL Argos Engineering & Heavy Industries Co Ltd v Li Oi Lin* [2001] 3 HKLRD 634 which was that issues concerning creditor classification should be left to the sanction hearing (see *TT International* at [60]).

62 The issue was settled by *TT International*, where this court stated that the court must consider issues of creditor classification at the convening stage (at [59] and [62]). A preference for the approach in the 2002 Practice Statement was expressed as it provided a greater degree of certainty in the scheme process (at [60]–[62]).

63 *TT International* summarised the approach in the 2002 Practice Statement in the following terms (at [59]):

> In England, the practice regarding applications to court for meetings is governed by an updated Practice Statement (Companies: Schemes of Arrangement) [2002] 1 WLR 1345 … The Practice Statement states that it is the applicant's responsibility to determine whether more than one meeting of creditors is required for the scheme … The court, in considering whether or not to order meetings of creditors, 'will consider

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> whether more than one meeting of creditors is required and if so what is the appropriate composition of those meetings' … It is also stated that it is the applicant's responsibility to raise any issues relating to creditors to the court for its directions. *Notwithstanding the above, it is further provided that creditors who consider themselves unfairly treated will still be able to raise objections at the sanction hearing, though the court will expect a good explanation for why they were not raised earlier*.
>
> [emphasis in original omitted; emphasis added in italics]

64 Thus, as a result of *TT International*, it would seem that a creditor, who seeks to raise objections regarding class composition at the sanction hearing, should be expected to provide a good explanation or offer a good reason for why the objection was not raised earlier. However, the question of the consequences that should follow in the absence of good reasons was not considered in *TT International*. Indeed, it was also not addressed in the 2002 Practice Statement.

65 The respondents place significant weight on the Practice Statement (Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006) dated 26 June 2020 (the "2020 Practice Statement") in aid of their argument that UTSS ought to be shut out from raising the objections on classification at the sanction hearing, absent a good reason or explanation. In our view, the 2020 Practice Statement does not assist the respondents.

66 The 2020 Practice Statement largely mirrors the position in the 2002 Practice Statement (collectively the "Practice Statements"). Like the 2002 Practice Statement, it requires the court to consider the issue of classification at the convening hearing (para 11), and creditors who raise objections on classification at the sanction hearing have to offer a good reason why the objection was not taken earlier (para 10). However, the 2020 Practice Statement also does not address the question of non-compliance. Thus, it does

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not aid the respondents' argument that the court must shut out the objecting creditor in absence of a good reason or explanation.

67 The Judge relied on two decisions, *Smile Telecoms* and *Re ColourOz Investment 2 LLC and others* [2021] 1 BCLC 55 ("*ColourOz*"), to arrive at his conclusion. It is instructive to examine them.

68 *ColourOz* was decided after the release of the 2020 Practice Statement. There the English High Court reviewed the process for effecting a scheme of arrangement. Snowden J (as he then was) stated that (at [44]):

> *Whilst the court would always have to address a class question even if raised at sanction (because it goes to jurisdiction),* the implicit warning now repeated in para 10 of the New Practice Statement is that *unless a good reason can be shown, such a late submission is unlikely to be well received and might, in an extreme case, justify disallowing an opposing creditor's costs, or even making an adverse costs award.* But the *quid pro quo* is that proper notice should be given to creditors so that they have an effective opportunity to consider the matter, take advice and if so advised, appear at the convening hearing at which the constitution of the classes is determined.
>
> [emphasis added]

69 UTSS submits that *ColourOz* supports the view that a failure to raise classification issues at the convening stage without good reasons should at most warrant an adverse costs order. On the other hand, the respondents submit that UTSS has adopted an erroneous reading of *ColourOz*, without truly attempting to explain why. In our view, it is clear that the court's view was that the court would have to address a class composition issue even if it was only raised at the sanction hearing without good reason *because the issue goes to the court's jurisdiction to sanction the scheme*. Even in extreme cases, an objecting creditor's failure to justify their delay in raising their objections will, at most, result in cost consequences.

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70 *Smile Telecoms*, which was also a decision of Snowden LJ, concerned an application for the court to sanction a restructuring plan proposed by a company under Part 26A of the UK Companies Act 2006. The issue in that case was whether the court should reconsider its previous decision, made at the convening hearing, that the company was only required to summon a single meeting of creditors in accordance with s 901C(4) of the UK Companies Act 2006. Section 901C(4) provides that the court has the power to exclude various classes of creditors or members of the company from being summoned to meetings to consider a restructuring plan if the court is satisfied that none of the creditors or members of that class has a genuine economic interest in the company. Prior to the convening hearing, a creditor, African Export-Import Bank ("Afreximbank"), had written to contest the conclusion that the lenders under various senior facilities (the "senior lenders") did not have a genuine economic interest. However, following the company's response, no further communication had been received from Afreximbank by the time of the convening hearing. Further, no plan participants had appeared at the convening hearing to contest the application for the order under s 901C(4) of the UK Companies Act 2006. After the convening hearing, Afreximbank wrote to the company, asserting that the restructuring plan was unfair to it and the other senior lenders on the basis that the company's valuation of the creditors or members' position in the relevant alternative was incorrect.

71 Addressing the question of whether the court was required to reconsider the applicability of s 901C(4), the English High Court first remarked that while questions of class composition went to the jurisdiction of the court to sanction schemes, it was an open question whether a decision under s 901C(4) similarly went to the jurisdiction of the court to sanction the plan, such that if a point were raised it "would have to be reconsidered at sanction in the same way as the more

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conventional questions of the composition of the classes that have actually voted" (*Smile Telecoms* at [47]). The court then stated as follows (at [48]):

> … As such, if a plan company has given proper notice of the convening hearing and of its intention to seek an order under section 901C(4), if those affected have had a proper opportunity adduce evidence in opposition to such an order, *if the court has been satisfied by the evidence adduced at the convening stage and there has been no material change of circumstance, in my judgment the court should not, absent some good reason, be required to conduct that evidential exercise again at the sanction hearing,* with the attendant waste of time and expense that this would cause.
>
> [emphasis added]

72 On the facts of the case, Afreximbank did not appear at the sanction hearing and provided no reason for why it did not raise its objections at the convening hearing (*Smile Telecoms* at [49]). As such, the court held that he was not required, and could not attempt, to analyse Afreximbank's allegations. There was therefore no reason to re-evaluate the decision that some of the scheme participants had no genuine economic interest in the company (*Smile Telecoms* at [55]).

73 Referring to paragraph 48 of *Smile Telecoms* cited above, the Judge was of the view that *Smile Telecoms* stood for the proposition that if a creditor had not disputed a classification issue at the convening stage and did not provide a good reason for its failure to do so, the court is not required to address that issue again at the sanction hearing (see GD at [38]). UTSS disagrees with the Judge's interpretation of *Smile Telecoms*. We agree with UTSS's submission. With respect, *Smile Telecoms* was not about the issue of classification.

74 In our view, it would be incorrect to read Snowden LJ's remarks in *Smile Telecoms* as reflecting the view that matters of jurisdiction such as the classification of creditors should not be considered at the sanction hearing if it

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had not been raised at the convening hearing without good reason. This would be contrary to the views he expressed in *ColourOz* and there was no indication in *Smile Telecoms* that he intended to depart from that view.

75 Snowden LJ's observations must be read in context. It is clear that as the objecting party, it was for Afreximbank to adduce the relevant evidence and appear at the sanction hearing to argue its position. Afreximbank did neither, which therefore meant that there was no basis for the court to reconsider. Additionally, it was unclear to the court whether s 904C(4) was jurisdictional in the same way that classification was. As such, the court considered that a stricter approach could be applied to s 901C(4) – *ie*, absent a good reason, a court need not redetermine any objections to an order under s 901C(4) at the sanction hearing. As rightly pointed out by UTSS, there is no equivalent provision to s 901C(4) in the Companies Act. Accordingly, *Smile Telecoms* in fact supports the view that the court should consider classification objections at the sanction stage because they go towards the jurisdiction of the court to sanction the scheme.

76 For completeness, we also consider the two additional decisions which the respondents submit support their view. They are *DX Holdings* and *Re Ophir Energy plc* [2019] EWHC 1278 (Ch) ("*Ophir Energy*"). For the reasons explained above (at [58]), *DX Holdings* does not support the respondents' position.

77 *Ophir Energy* also does not assist the respondents. The issue in *Ophir Energy* was the adequacy of the explanatory statement to the scheme of arrangement. One of the company's shareholders, Legal & General Investment Management ("LGIM") had written to inquire whether, in theory, a shareholder could challenge a scheme on the basis that all the necessary information had not

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been disclosed to the creditors. The company responded to LGIM, but LGIM did not raise any further issues on the adequacy of the explanatory statement. Three days before the sanction hearing, LGIM sent an email objecting to the scheme on the ground of inadequate disclosure but stated that it would not be making an application to oppose the scheme being sanctioned. LGIM did not attend the sanction hearing or otherwise communicate its concerns to the court. The English High Court held that in the absence of LGIM appearing to raise its concerns with the court and to explain the detailed background to the points made, it was impossible for the court to form a judgment as to whether the matters identified by LGIM were material matters that should have been dealt with differently in the explanatory statement (*Ophir Energy* at [32]). LGIM's reasons for failing to appear at the hearing were unmeritorious and its failure to raise its concerns at an earlier stage "had all the hallmarks of a late spoiling tactic" as opposed to a genuine concern on the part of LGIM as to the adequacy of the explanatory statement. Finally, LGIM did not actually suggest that the scheme should not be sanctioned or that the sanction hearing should be adjourned for further evidence or consideration (*Ophir Energy* at [33]–[37]).

78 The decision in *Ophir Energy* echoed the analysis in *Smile Telecoms* in that, like Afreximbank, LGIM did not convey its concerns to the court and, in fact, did not even contest the sanction of the scheme. As a result, it was "impossible" for the court to determine the issues raised. This is distinguishable from the present case where UTSS has conveyed its objections and the grounds for such objections to the court. We therefore do not find *Ophir Energy* as an authority for the proposition that the respondents contend for.

79 We conclude on this issue by briefly addressing the policy concerns raised by the respondents. According to the respondents, the practices governing the scheme of arrangement process in Singapore should facilitate the early

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ventilation of classification issues. Upholding the Judge's approach would facilitate that. The respondents submit that UTSS's position would instead encourage creditors to adopt delay tactics and raise classification objections only at the sanction hearing.

80 It is incontrovertible that an argument based on policy has no relevance if the statutory framework is clear. The Companies Act is clear that the classification of creditors is a matter of jurisdiction. Accordingly, we do not accept the respondents' argument that the court is entitled to disregard a classification objection that is raised late and without good reason on the basis of any policy consideration that is not reflected in the relevant statutory provisions.

81 That said, there is merit in the view that class composition issues should be raised at the convening stage as far as possible. Indeed, that is the position in Singapore, as stated in *TT International*. The early resolution of classification issues promotes certainty and minimises the risk of convening futile scheme creditors' meetings. To that end, creditors should be discouraged from adopting dilatory or delay tactics to prevent the passing of a scheme. However, rather than disregarding a meritorious challenge that has been made late for whatever reasons, the issue is best addressed through the imposition of cost consequences. For instance, in *ColourOz* (at [44]), the English High Court stated that possible consequences for a failure to raise classification objections in a timely manner without good reason may include, in an extreme case, "disallowing an opposing creditor's costs, or even making an adverse costs award".

82 In conclusion, we summarise our views as follows. The court should consider and determine any objections to the classification of creditors in a scheme of arrangement at the sanction stage, even if such objections were not

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raised earlier without good reason or explanation. Absent a good reason or explanation, cost consequences may ensue. We therefore find that UTSS's classification objections should have been considered by the Judge in deciding whether the Scheme should be sanctioned, subject to questions of costs.

Whether UTSS had a good reason for not raising its objections earlier

83 That leaves one final point on the first issue and that is whether UTSS had a good reason or explanation for not raising its objections at the convening hearing. As stated above, the conclusion here may result in cost consequences for UTSS. UTSS offers, as its main justification, that it was only clear from the Liquidators' written submissions for OA 555 dated 28 June 2024 (*ie*, one working day before the convening hearing) that the Scheme would pass regardless of how UTSS's voted. UTSS asserts that once that became apparent, it raised its objections within nine days of the convening hearing.

84 We agree with the Judge that this reason did not pass muster. First, we do not accept UTSS's explanation that it should only raise its objection after it became apparent that the Scheme would likely pass. That flies against the views expressed in *TT International* and the jurisprudence we have canvassed above that such objections should be raised at the convening hearing promptly.

85 Second, UTSS's concern that the Scheme would pass regardless of how it voted should have arisen even earlier when not a single objection to the Scheme was raised as of 6 June 2024 (*ie*, the date OA 555 was filed). As pointed out by the respondents, the absence of any objections to the Scheme at 6 June 2024 should have raised the real prospect of the Scheme obtaining approval from the Scheme Creditors bar UTSS.

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86 Third, while UTSS might have had raised its objections nine days after the convening hearing, the classification of creditors was made known to all the Scheme Creditors from as early as the 17 May Dialogue Session, well before the convening hearing. UTSS thus had ample time and opportunity between the 17 May Dialogue Session and the convening hearing to raise its objections but failed to do so. That this was in the face of the Judge specifically directing on 14 June 2024 for the creditors to file reply affidavits to raise their objections by 21 June 2024, if any, is particularly troubling.

87 Based on the arguments advanced by UTSS before the Judge and before us, it is plain that UTSS's objection to the Scheme was principally that it should not be placed in the Potential Secured Creditors Class because its security interest was not disputed or disputable, and ranked ahead in priority to the security interests of the other Potential Secured Creditors (to the extent such interests did exist) in the Filled Tank Proceeds. Seen in this light, UTSS's justification for not raising its objection because it wanted to first determine whether the Scheme was likely to pass rings hollow. It seems to us that UTSS could and should have raised the issue at the convening hearing, regardless of how the vote on the Scheme would have gone.

88 In the round, we are of the view that UTSS did not have a good reason for failing to raise its objection at the convening hearing. We address the ensuing cost consequences below (at [144]).

Whether the Scheme should be sanctioned

89 We turn to consider the central issue in the present appeals – whether the Judge had erred in sanctioning the Scheme. This inquiry is situated in the third stage of the scheme of arrangement process (see above at [53]). The court must be satisfied of three requirements before sanctioning the scheme. These

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requirements were set out by this court in *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] 3 SLR(R) 121 ("*Oriental Insurance*") (at [43]) as follows:

> (a) The court must be satisfied that the statutory provisions have been complied with. …
>
> (b) The court must be satisfied that those who attended the meeting were fairly representative of the class of creditors or the class of members (where applicable), and that the statutory majority did not coerce the minority in order to promote interests adverse to those of the class whom the statutory majority purported to represent.
>
> (c) The court must be satisfied that the scheme is one which a man of business or an intelligent and honest man, being a member of the class concerned and acting in respect of his interest, would reasonably approve.

90 Subsequent to this court's decision in *Oriental Insurance*, the English courts included a fourth requirement to the aforementioned test. Namely, the court is to consider whether there is any "blot" or defect in the scheme that would, for example, make it unlawful or in any other way inoperable (*Re Noble Group Ltd* [2019] 2 BCLC 548 ("*Noble Group (No 2)*") at [17]; *Re AGPS BondCo plc* [2025] 1 All ER (Comm) 26 at [115]–[117]; *Kington S.À.R.L. and others v Thames Water Utilities Holdings Ltd and others* [2025] EWCA Civ 475 at [100]). We accept this as an appropriate refinement to the requirements stated in *Oriental Insurance.* The present appeals only engage the first and third requirements.

Whether the classification of creditors under the Scheme was appropriate

91 As a preliminary point, we agree with UTSS that the question of the appropriate classification of creditors relates to the first *Oriental Insurance* requirement. Issues relating to the classification of creditors in a scheme affects the fulfilment of the statutory requirement regarding the approval of a majority

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in number and value of the creditors pursuant to s 210(3AA)–(3AB) of the Companies Act. In the English High Court decision in *Noble Group (No 2)*, it was said that the first requirement involves an analysis of "questions of class composition [and] whether the statutory majorities were obtained" (at [17]). Although the court generally considers classification issues at the convening stage (see *TT International* at [59] and [62]), such issues relate to whether the scheme should be sanctioned for reasons explained earlier and therefore are appropriately considered under the first requirement. In any case, as UTSS had only raised its classification objections after the convening hearing, the question of classification arises for consideration at the sanction stage for the purposes of the present appeals. With that we turn to the central issue – were the Potential Secured Creditors correctly classified in a single class?

The law on classification

92 The law on the classification of creditors in a scheme of arrangement is well-settled. The general principle is that persons whose rights are so dissimilar that they cannot sensibly consult together with a view to their common interest must be classed separately. This principle is known as the "dissimilarity principle". On the other hand, persons whose rights are sufficiently similar that they can consult together with a view to their common interest should be summoned to a single meeting (*TT International* at [130]–[131]). The test assesses the similarity or dissimilarity of the legal rights against the company as opposed to the similarity or dissimilarity of the interests derived from such rights (*TT International* at [130]).

93 In assessing the similarity or dissimilarity of the creditors' rights, the court considers the creditors' rights in the "appropriate comparator" and the treatment of those rights under the scheme. If the position of a creditor or a

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group of creditors will improve or be disadvantaged to such a different extent *vis-à-vis* the other creditors because of the terms of the scheme assessed against the appropriate comparator, then such creditor or creditors should be placed in a different voting class from the other creditors (*TT International* at [140]).

94 As previously summarised by this court in *Pathfinder Strategic Credit LP and another v Empire Capital Resources Pte Ltd and another appeal* [2019] 2 SLR 77 ("*Pathfinder*"), there are three broad steps in assessing whether the classification of creditors under the scheme is appropriate (at [88]):

> (a) First, identify the comparator …
>
> (b) Second, assess whether the *relative* positions of the creditors under the proposed scheme *mirror* their *relative* positions in the comparator. This implies that at least four positions must be identified and compared: the positions of the two groups of creditors under the proposed scheme, and their 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' … This raises a question of judgment and degree. …
>
> [emphasis in original]

95 Therefore, critical to the question of classification is correctly identifying the appropriate comparator and the rights of the creditor that the scheme seeks to compromise.

The appropriate comparator

96 We begin by identifying the appropriate comparator. The appropriate comparator is the "most likely scenario in the absence of scheme approval", which will often, although not necessarily, be insolvent liquidation (*Pathfinder* at [87]; *TT International* at [140]).

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97 The Judge concluded that the appropriate comparator was "proceeding with a determination of security claims, with all the time, trouble and expense that entailed", and not an insolvent liquidation. UTSS challenges this conclusion. It submits that the appropriate comparator is instead the determination of the rights of the Potential Secured Creditors in the Interpleader Proceedings and related applications for the purpose of effecting a distribution in accordance with the statutory prescribed sequence of priorities. Accordingly, placing the Potential Secured Creditors in one class without first assessing whether each has a security interest and if so, the priority it has *vis-à-vis* the other security interests (to the extent they exist) is impermissible. The assessment could be done by incorporating an adjudication mechanism in the Scheme, or by way of the Liquidators' own assessment. Failing to make the assessment would mean that: (a) secured creditors would be classified together with unsecured creditors; and (b) as between secured creditors, the respective security interests are not ranked in terms of priority. While UTSS accepts that it may be possible in an appropriate case for a scheme to include uncertain claims, it asserts that, *for the purpose of classification*, the scheme must incorporate a mechanism for the determination of those claims. UTSS relies on the decisions of *Re Hawk Insurance* and *Re T&N Ltd and others (No 3)* [2007] 1 BCLC 563 ("*Re T&N*") in support of its submissions. The respondents submit that the Judge correctly concluded on the appropriate comparator as all the Potential Secured Creditors are in the same position, namely, they have a contingent security interest which was subject to determination in litigation in the Interpleader Proceedings and related applications.

98 The essence of UTSS's submission is that classifying the Potential Secured Creditors without first assessing the rights and priorities in each case would be to misclassify. The assumption in this argument is that the Scheme seeks to compromise security rights. That is not the case. Instead, the Scheme

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seeks to compromise *claims* to security rights that are uncertain as to rights and priority, with a view to avoiding costly and complex litigation that is uncertain as to outcome. The appropriate comparator is therefore not the distribution of the estate of Hin Leong in accordance with statutorily prescribed priorities for a company in compulsory liquidation following the determination of the Interpleader Proceedings and the related applications. Rather, it is the situation the Potential Secured Creditors would face from navigating the litigation process to get to a determination of their claims including the uncertainty of outcome and costs that entails. Absent the Scheme, that is the most likely scenario the Potential Secured Creditors would face.

99 This brings us to the question of an adjudication mechanism which UTSS contends is a necessary component, *for the purpose of classification*, of a scheme that seeks to compromise uncertain claims. We make three points. First, the authorities cited by UTSS do not support this proposition. Second, any adjudication mechanism would not be fit for purpose in assessing the claims of the Potential Secured Creditors given the factual and legal complexities of the claims. Third, UTSS's submission here makes the same erroneous assumption as its argument on the appropriate comparator, namely, that the Scheme seeks to compromise security rights as opposed to claims to security rights. The third point has already been addressed above. We consider the first and second points below.

100 We start by observing that UTSS's argument is counterintuitive. UTSS accepts that schemes can be used to compromise uncertain claims. But it contends that is only permissible if the claims are first adjudicated for the purpose of classification, which would then make the claims no longer uncertain. This is self-contradictory. Unsurprisingly, the authorities it has cited, *Re Hawk Insurance* and *Re T&N*, do not stand for the proposition that a scheme

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of arrangement that seeks to compromise uncertain claims must include an adjudication mechanism for the determination of those claims for the purpose of classification. The "adjudication mechanism" referred to in these cases relate to the mechanism for the adjudication of the *valuation* of the creditors' claims for dividend distribution and not for the adjudication of the creditors' *rights* against the applicant company for the purpose of classification. The question of whether a rights adjudication mechanism providing for the summary determination of the scheme creditors' claims is necessary was therefore not in issue in either case. Neither case goes so far as to posit that schemes of arrangement, which seek to compromise contingent or uncertain claims, must contain a mechanism for the determination of rights for the purpose of assessing whether the creditors have been appropriately classified.

101 The scheme of arrangement in *Re Hawk Insurance* provided for the creditors of the applicant company to be paid a proportion of their valid claims against the company, after accounting for any applicable set-off. Some of the scheme creditors' claims arose from insurance or re-insurance contracts which could fall within one of three classes – unsettled paid claims, outstanding losses and incurred but not reported ("IBNR") losses. The scheme provided that the value of the claims, absent an agreement between the claimant and the joint scheme administrators, would be determined by a scheme adjudicator in accordance with the dispute resolution procedure stipulated in the scheme. The scheme consideration was to be paid to the scheme creditors by way of dividend on the amounts of their admitted claims, but in the case of admitted claims arising out of insurance and re-insurance contracts, subject to a dividend weighting mechanism in accordance with a formula set out in the scheme (*Re Hawk Insurance* at [35]). The weighting mechanism provided that for the unsettled paid claims, outstanding losses and IBNR losses, only a proportion of the valued claim would be paid out in the form of dividends. The main issue in

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that case was whether the dividend weighting mechanism fractured the class of creditors with insurance or re-insurance contracts, such that the creditors with unsettled paid claims on the one hand and creditors with outstanding or IBNR losses on the other should be placed in separate classes.

102 It is clear that the issue in *Re Hawk Insurance* was over the *valuation* of the claims of creditors with outstanding or IBNR losses. There was no dispute over whether the creditors had rights against the company and the nature of those rights. The scheme there was not about compromising claims to rights by potential creditors, unlike the present case where the crux of the dispute is over whether the Potential Secured Creditors have valid claims to security rights and the priority that they confer. The valuation and/or weighting mechanism in *Re Hawk Insurance* was therefore predominantly concerned with the adjudication of claims for the purpose of valuation for dividend distribution and not for the purpose of classification. In any case, the court in *Re Hawk Insurance* also did not appear to find that the valuation mechanism was either a necessary or relevant condition in granting sanction of the scheme. Instead, the point made in that case was that the weighting provisions, which merely reflected the need for a just estimate of the value of the claims, did not reflect any differences in the creditors' rights, such that separate classes were warranted (see *Re Hawk Insurance* at [50]).

103 Similarly, the adjudication mechanism in *Re T&N* related to a "trust distribution procedure" in order to establish the *value* of a claim for the purpose of distribution, and not for the adjudication of the creditors' rights (see *Re T&N* at [13]–[14]). Moreover, the discussion in *Re T&N*, regarding the trust distribution procedure, centred on whether the *scheme* differed in its treatment of the creditors and not whether the rights of the creditors in the appropriate comparator were similar. The court simply found that, on the facts, the trust

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distribution procedures in the scheme allowed for a similar treatment of claimants with existing judgments or final agreements and claimants with undetermined claims or who could have made claims but had yet to do so (*Re T&N* at [89]).

104 We are therefore unable to accept UTSS's submission that an adjudication mechanism for the purpose of classification is a necessary component of a scheme of arrangement which seeks to compromise uncertain and/or undetermined rights.

105 We turn to the question of whether the adjudication mechanism is feasible in the present case. The decision in *Noble Group (No 2)* is instructive. In that case, the court considered the adequacy of the mechanism for the summary adjudication of the scheme creditors' rights under the third *Oriental Insurance* requirement. In the case of disputed claims, the scheme provided for a claim determination and adjudication procedure whereby the scheme administrators would first assess the submitted claims in a manner similar to the admission of proofs of debt in a winding up. If the claims were rejected in whole or in part, and no agreement could be reached with the creditor in question, the creditor had the option of referring their claim to an independent adjudicator, who would be either a retired Court of Appeal judge or a nominated Queen's Counsel (see *Re Noble Group Ltd (No 1)* [2019] 2 BCLC 505 ("*Noble Group (No 1)*") at [8]–[9]). The English High Court observed that while it may be "entirely legitimate" for a scheme to restrict the access of creditors to the courts through the use of an independent adjudicator, where the creditors' rights of recourse to the court were removed or restricted by virtue of a scheme, it was of heightened importance that the substitute for legal recourse in the courts be "robust, satisfactory and justified" (*Noble Group (No 2)* at [74], referring to *Re Pan Atlantic Insurance Co Ltd* [2003] 2 BCLC 678 at [33] and *Re Lehman*

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Brothers International (Europe) [2018] EWHC 1980 (Ch) ("*Lehman Brothers*") at [158]). On the facts of the case, the court held that the adjudication process was fair (*Noble Group (No 2)* at [75]–[76]). Although the analysis in *Noble Group (No 2)* was in the context of considering the fairness of the scheme, the inquiry of whether an adjudication mechanism is sufficiently robust, satisfactory or justified is equally applicable to the present context.

106 The question therefore is whether any adjudication mechanism would be robust, satisfactory or justified in the present case. As a starting point, any adjudication mechanism in a scheme of arrangement will necessarily involve a summary determination of the scheme creditors' rights. The respondents submit that the Potential Secured Creditors' claims to security in terms of validity and priority are heavily disputed and involve factually and legally complex issues. UTSS did not seriously contest the submission, resting its position on the need for an adjudication mechanism even if the claims were as characterised by the respondents. We agree with the respondents that the Potential Secured Creditors claims are the subject of heavy contest and raise legal and factual issues of some complexity. The validity of the Financing Banks' security rights is the subject of SUM 4108. That involves an assessment of whether the import and inventory financing transactions were capable of creating a security interest in favour of the Financing Banks by way of a "pledge by attornment", and whether a "pledge by attornment" must be registered as a charge under s 131(3)(*d*) of the Companies Act for it to be enforceable. SUM 4108 is to be heard with the UTSS Interpleader as there are overlapping issues. The validity of UTSS's security right is in issue in both SUM 1003 and the UTSS Interpleader. Both proceedings are fraught with complexity. As to SUM 1003, questions arise on whether UTSS's claims for the Termination Sum and Storage Fees, and any lien arising therefrom, contravene the *pari passu* principle of distribution and/or the anti-deprivation rule. The UTSS Interpleader is itself protracted and heavily

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contested, as multiple parties assert ownership over the oil products stored in the UTSS Disputed Tanks. Further, allegations of UTSS's complicity in the alleged fraud of Hin Leong and its former directors, if established, raise questions over the validity of UTSS's security interest (see below at [115]).

107 It is evident that a summary process is wholly unsuitable to resolving such claims in a robust and satisfactory manner. An attempt to summarily adjudicate the claims of the Potential Secured Creditors would impose an almost impossible burden on adjudicators to arrive at a robust, satisfactory and defensible conclusion. The consideration here is similar to the exercise of discretion to grant leave to commence or proceed with litigation or arbitration where a moratorium is in place. In both situations, the question is whether an adjudication framework is fit for purpose given the complexity of the claim (both factually and legally) (see *Sapura Fabrication Sdn Bhd and others v GAS and another appeal* [2025] SGCA 13 at [69]; *Kyen Resources Pte Ltd (in compulsory liquidation) and others v Feima International (Hongkong) Ltd (in liquidation) and another matter* [2024] 1 SLR 266 at [52]–[53]; and *Wang Aifeng v Sunmax Global Capital Fund 1 Pte Ltd and another* [2023] 3 SLR 1604 at [25(a)]).

108 We make a final observation. If UTSS's argument on the necessity for an adjudication mechanism is correct, but such a mechanism is not feasible, Hin Leong will not be able to effect a scheme of arrangement for the distribution of the Uninjuncted Proceeds. The only option would be to have the rights of the Potential Secured Creditors determined in the Interpleader Proceedings and related applications. This is an untenable view, which goes against the foundational belief that creditors should have the liberty to agree to accept something different from their strict rights (see, *eg*, Ian Fletcher *et al*, *Corporate*

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Administrations and Rescue Procedures (LexisNexis, 2nd Ed, 2004) ("Fletcher") at para 13.15).

109 We therefore agree with the Judge that the appropriate comparator is the situation where the Potential Secured Creditors' claims are allowed to proceed to their full and final determination in the Interpleader Proceedings and related applications, with the ensuing issues of time, expenses and uncertainty of outcome. It is neither necessary nor appropriate for the claims of the Potential Secured Creditors to be adjudicated for the purpose of classification.

The relative positions of the creditors in the appropriate comparator and under the Scheme

110 We turn to consider the relative positions of the Potential Secured Creditors under the Scheme and in the appropriate comparator. If the positions mirror each other, classifying the Potential Secured Creditors in one class is appropriate. In our view, the relative positions mirror each other.

111 The question resolves itself when it is clear what the Scheme seeks to compromise. The compromise is of the Potential Secured Creditors' *claims* to security rights in return for a *pari passu* distribution. Such claims are uncertain as to interest and priority and determining them involves issues of time, costs and uncertainty of outcome. Each Potential Secured Creditors' claim is treated on the same basis because they are impacted by uncertainty.

112 In the appropriate comparator, the Potential Secured Creditors are in a similar position facing the same issues of time, costs and uncertainty of outcome by reason of the complexity of their claims. In the appropriate comparator, UTSS, like the other the Potential Secured Creditors, has an unresolved claim to a security interest over the Uninjuncted Proceeds. Whether that claim will

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succeed is uncertain and can only be resolved via complex, costly and time-consuming litigation. UTSS, like the Financing Banks, will have to pursue their claims to conclusion, thereby carrying the litigation risk that its claims may not succeed, and it will be no more than an unsecured creditor in that event.

113 Recognising this, the Scheme has classified the Potential Secured Creditors in one class on the basis that they each have a legitimate claim to security interest – the pursuit of which carries with it issues of costs, time and uncertainty of outcome (in terms of interest and priority). In treating all the claims in this manner, the Scheme has not approached the issue of classification on the basis of the specific security interest that each Potential Secured Creditor has claimed and the priority that such interest carries. In our view, this is the correct approach for two reasons. First, as stated earlier, the Scheme does not seek to compromise a specific security right or interest, but *a claim* to such a security right or interest. Thus, the distinguishing feature for the purpose of classification is the *claim* to a security right or interest and not the actual security right or interest. Second, for the reasons explained above, an assessment of each claim is not a feasible exercise given the complexity of the factual and legal issues.

114 The situation may be different if UTSS's right is clear. UTSS contends that any uncertainty as to interest and priority does not apply to its claim. It argues that it has a clear and established security interest (*ie*, the purported lien):

(a) SUM 1003 is only a challenge to the scope and not the existence of the lien.

(b) As there is no challenge in SUM 1003 to UTSS's right to apply the lien to the Storage Fees for the Filled Tanks before 27 April 2020 and ancillary charges for March to May 2020 which

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amount to S$2,044,840, UTSS has an undisputed secured claim for at least this sum.

(c) The challenges by the Financing Banks are a red herring as they relate to whether UTSS can assert a common law lien in respect of the oil in the Injuncted Tanks, and have no bearing on the validity of UTSS's lien against Hin Leong in respect of the Filled Tanks Cargo.

115 The respondents submit that the agreement between UTSS and Hin Leong on 27 May 2020 does not establish a lien in its favour. They point out that the validity of UTSS's lien is in issue in the UTSS Interpleader. The Financing Banks have taken issue with UTSS's lien. Others have challenged the validity of UTSS's entitlement to the storage and sale costs of some of the oil products on the basis of an alleged fraud between UTSS and the main controllers of Hin Leong to mislead and defraud the other Financing Banks.

116 Contrary to UTSS's submission, it is apparent that it does not have such a clear and undisputed security right to the Uninjuncted Proceeds. The Liquidators had not conceded to the existence of UTSS's purported lien. Quite apart from SUM 1003, it is to be seen whether the concerns over the involvement of UTSS in an alleged fraud, raised in the UTSS Interpleader, will affect UTSS's purported lien over the Uninjuncted Proceeds. Even if UTSS's purported security interest is established, it is unclear how UTSS will rank against the other Potential Secured Creditors. We are also unpersuaded by UTSS's submission that its rights are sufficiently dissimilar from the Financing Banks because its claim depends on the resolution of a different set of legal and factual issues. The simple fact remains that UTSS, much like the Financing Banks, is subject to an uncertain outcome in the appropriate comparator.

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Conclusion on the classification issue

117 In the round, we are satisfied that the relative positions of the Potential Secured Creditors, UTSS included, are sufficiently similar in the appropriate comparator and under the Scheme. UTSS and the Financing Banks are therefore appropriately classified in a single class (*ie*, the Potential Secured Creditors Class).

Whether the Scheme is one which a man of business or an intelligent and honest man would reasonably approve

118 UTSS submits that the Scheme is not one which a man of business or an intelligent and honest man would reasonably approve. UTSS's submission is founded on three broad reasons. First, the Scheme is not a rational compromise of the Potential Secured Creditors' rights against Hin Leong, but instead an "arbitrary forfeiture of rights which may or may not exist". Second, the Scheme documents do not disclose the total amount of Uninjuncted Proceeds to the scheme creditors. Third, although the Scheme Consideration is only a subset of the total Uninjuncted Proceeds, the Scheme requires the Potential Secured Creditors to irrevocably and irreversibly waive any security they may have in relation to the entire Uninjuncted Proceeds, with the balance set aside for future liquidation and legal expenses. According to UTSS, this amounts to a clear conflict of interest on the part of the Liquidators which should have been, but was not, disclosed to the creditors. At this juncture, we only address UTSS's first reason that the Scheme is not a rational compromise. We consider UTSS's remaining two reasons together with its related arguments on inadequate disclosure below (at [130]–[142]).

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Whether the Scheme is a rational compromise

119 The third *Oriental Insurance* requirement requires the court to consider whether the scheme is a reasonable one. Although the court's function does not extend to usurping the view of creditors and the court will generally be influenced by a big majority vote provided that the scheme is fair and equitable, the court is also not a mere rubber stamp. The court should see that the scheme "strikes a balance between the various interests involved which could be reasonably approved by the meetings" (see *Oriental Insurance* at [43], citing *Palmer's Company Law* (Geoffrey Morse ed) (Sweet & Maxwell, Looseleaf Ed, 1992) at vol 2 para 12.030 (July 2006 release)).

120 At the outset, we acknowledge that there is a big majority vote in favour of the Scheme. The Scheme was approved by: (a) 95.7% of the Scheme Creditors from the Potential Secured Creditors Class (representing 98.7% in value of the class); and (b) 100% of the Scheme Creditors from the Unsecured Creditors Class, present and voting.

121 In our view, whether there is a rational compromise necessarily involves an assessment of the benefits of the scheme against the prejudice suffered by the minority creditor(s) who object to the scheme being sanctioned. As articulated in Chris Howard *et al*, *Restructuring Law & Practice* (LexisNexis, 3rd Ed, 2022) ("*Restructuring Law & Practice*") at para 7.534:

> The question of whether the Scheme is one that ought to be reasonably approved is a more unpredictable one and whilst there will inevitably be disadvantages in any Scheme for a minority, the courts in responding to submissions of disadvantage have responded by focusing firstly on whether the class has been properly consulted and secondly *whether the advantages to the majority acting reasonably and bona fide in supporting the Scheme outweigh these disadvantages*. …
>
> [emphasis added]

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122 The purpose of the Scheme is to alter the rights of the creditors against the company, such that in exchange for giving up their entitlement to a full and final determination of their claims through the litigation proceedings, the creditors are conferred an interim dividend distribution of the Uninjuncted Proceeds on a *pari passu* basis. The question that arises is whether UTSS is clearly prejudiced by the compromise of its claim to a security right in return for an interim dividend distribution, such that the Scheme is not one which a man of business or an intelligent and honest man would reasonably approve.

123 It is pertinent that this is not the more common or perhaps even usual situation where a scheme of arrangement is proposed to restructure or rehabilitate a company. Hin Leong is already in compulsory liquidation. The Scheme is proposed for the sole purpose of effecting a distribution of assets to certain creditors who have claims to security rights that are pending determination by the courts.

124 A liquidator of a company in compulsory liquidation may propose a scheme of arrangement with the company's creditors for several reasons. One reason is that a scheme of arrangement may allow for a more expeditious distribution of assets than in a formal liquidation process (see *Restructuring Law & Practice* at para 7.45). In situations where the creditors' claims against the company are heavily disputed, the distribution of the company's assets pursuant to a scheme of arrangement provides creditors with greater certainty of their entitlements to a distribution of the company's assets and reduces the costs which would have otherwise been incurred in the liquidation process (see *Restructuring Law & Practice* at para 7.34).

125 *Lehman Brothers* is a good illustration of this. Although the company in that case, Lehman Brothers International (Europe) ("LBIE"), was not in

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compulsory liquidation but in a long-running administration, the benefits of the scheme of arrangement that was proposed in that case can be readily transposed to the present case. The decision concerned an application for the sanction of a scheme of arrangement between LBIE and some of its creditors pursuant to Part 26A of the UK Companies Act 2006. The proposed scheme sought to establish a mechanism for distributing a £7bn surplus in the company's estate to the creditors and in due course, bring the administration to an end. According to the administrators, the scheme provided "the only realistic way of enabling the distribution in LBIE's estate without years of further litigation" (*Lehman Brothers* at [3]). This was because the administration of LBIE gave rise to novel issues with considerable disputed amounts and a variety of proceedings that were pending determination at the first instance or on appeal (*Lehman Brothers* at [7]–[8]).

126 Under the scheme, the creditors were asked to give up the possibility of establishing a greater quantum of interest on appeal in return for a speedy mechanism to return the surplus and avoid continued loss of the time value of money, the continued wastage of costs and any benefit or burden arising from the litigation (*Lehman Brothers* at [119]). The court observed that there was no reasonable doubt that in the absence of the scheme, the administrators would be unable to distribute the surplus for an indeterminate but almost inevitably lengthy period and such material delay was inherently and inevitably prejudicial to all creditors (*Lehman Brothers* at [121]). As regards the overall fairness of the scheme, the court concluded that the benefits of the scheme were obvious and considerable, especially since further delay would occasion substantial loss. Thus, there was no unfairness to warrant refusing to sanction the scheme (*Lehman Brothers* at [164]–[166]). Suffice it to say when the distribution of the company's assets is inundated by complex disputes pending resolution by the court, a scheme of arrangement is a viable and possible means for the company

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to ensure the efficient return of monies to its creditors and avoid the pool of assets for distribution to the creditors from being depleted by further costs.

127 However, when a company in liquidation proposes a scheme of arrangement to resolve pending claims, there is the possibility that the scheme may disenfranchise the company's creditors from a possibly more favourable outcome in the liquidation upon determination of the claims. It is therefore conceivable that some creditors may prefer to await the determination of their claims, with a view to a more favourable distribution in the liquidation in the belief that they will be entitled to a greater share of the company's assets. In an appropriate case, this may give rise to a degree of such unfairness that it may be said that a man of business or an intelligent and honest man would not reasonably approve the scheme.

128 However, this is not such a case. In this instance, the benefits of the Scheme are: (a) the early distribution of the company's assets on a *pari passu* basis to creditors who, on the face of it, demonstrate a viable claim; (b) the reduced uncertainty of the Scheme Creditors' recovery in Hin Leong's insolvency; and (c) avoiding a further depletion of the company's assets. Given the protracted nature of the proceedings concerning the validity of the Potential Secured Creditors' security claims, the amount of Hin Leong's assets available for distribution among the Scheme Creditors will continue to be diminished by the litigation costs incurred in defending the claims. These costs will reduce the pool of assets available for distribution to all of Hin Leong's creditors, including UTSS. This is especially so in the context of a company under insolvent liquidation, where the company's assets are already insufficient to meet its liabilities. Whittling away the assets of the company to resolve complex claims for the perceived benefit of one party may not be justified. In our assessment, the Scheme offers significant benefits to the Scheme Creditors, including UTSS.

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129 Also, there can be no clear prejudice caused to UTSS bearing in mind the complexity of issues, factual and legal, that need to be ventilated to establish its claim, costs in pursuing the litigation and the dilution of the estate in the appropriate comparator. As we have analysed above, UTSS's security claim is not beyond dispute. Instead, it is open to challenge in the same way as the claims of the Financing Banks. UTSS and the Financing Banks only have *claims* to security interests that may or may not exist, and which are also uncertain as to priority. The Scheme allows for the Potential Secured Creditors to trade a claim to a right that is uncertain both as to interest and priority, in return for an interim dividend distribution of the Uninjuncted Proceeds. Put simply, the Potential Secured Creditors are trading uncertainty for certainty. Given the lack of significant prejudice caused to UTSS, we conclude that the Scheme is a rational compromise. In a nutshell, having regard to the complexity of the claims, costs and dilution of the estate, it just is not the case that there is any clear unfairness or prejudice to UTSS by reason of the Scheme.

Whether there was sufficient disclosure by the Liquidators

130 UTSS submits that the Scheme should not be sanctioned because of inadequate disclosure by the Liquidators. The applicable principles regarding the standard of disclosure required by a company have been comprehensively set out by this court in *Pathfinder*.

131 At the leave stage, the company bears a duty of unreserved disclosure to assist the court in determining whether and how the creditors' meeting is to be conducted. This requires at least such disclosure as would enable the court to determine the issues that it must properly consider at the leave stage, such as the classification of creditors, the proposal's realistic prospects of success and any allegation of an abuse of process. The company is also required to provide

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financial disclosure by the leave stage in such manner and to such extent as is reasonably necessary for the court to be satisfied that the fair conduct of the creditors' meeting is possible (*Pathfinder* at [50]–[51]). This requirement goes towards ensuring the fairness of the creditors' meeting(s) (*Pathfinder* at [52]).

132 Section 211(1) of the Companies Act also requires the company to provide its creditors with a statement "explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors … and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons". Additionally, at the sanction stage, the company must demonstrate that, by the time of the creditors' meeting, it has disclosed sufficient information to ensure that the creditors are able to "exercise their voting rights meaningfully" (*Pathfinder* at [47]; *Wah Yuen Electrical Engineering Pte Ltd v Singapore Cables Manufacturers Pte Ltd* [2003] 3 SLR(R) 629 at [24]).

133 UTSS's submissions in this regard may be reduced to two principal contentions, namely that the Liquidators failed to disclose: (a) the actual quantum of the Uninjuncted Proceeds; and (b) the full details of the Liquidators' financial incentives in passing the Scheme. As will be evident from the analysis to follow, the two contentions are linked to a broader point that there has been inadequate disclosure on the Liquidators' fees. The point is that by proposing a scheme that requires the Potential Secured Creditors to waive their claim to a security right, the Liquidators stand to benefit by utilising the difference between the Uninjuncted Proceeds and the Scheme Consideration for their fees and that of their lawyers. This leads to an alleged conflict of interest on the part of the Liquidators.

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134 Regarding the first point on the actual quantum of the Uninjuncted Proceeds, UTSS contends that the Scheme Creditors should not be required to "dig out documents that were received more than three years ago in order to discern" the quantum of the Uninjuncted Proceeds. Further, UTSS asserts that it is factually incorrect that the Uninjuncted Proceeds amount to only US$88.3m because there is additional cargo stored at 37 & 41 Tuas Road (the "Tuas Cargo") which the Liquidators were "in the process of selling".

135 The respondents' position is that the breakdown of the net sales proceeds from the tanks or vessels that were not subject to court injunctions (and therefore comprise the Uninjuncted Proceeds) was clearly set out in the judicial managers' report dated 6 November 2020 (the "6 November JM Report") read with the judicial managers' report dated 7 February 2021 ("7 February JM Report") (collectively, the "JM Reports"). From the JM Reports, it was clear that the Uninjuncted Proceeds amounted to only US$88.3m. This could be derived by adding the indicated net sales proceeds in the 6 November JM Report of US$68.1m to the additional net sales proceeds realised by Hin Leong of US$20.2m indicated in the 7 February JM Report. Moreover, the respondents submit that UTSS is alleging for the first time in the present appeals that the Uninjuncted Proceeds amounted to more than US$88.3m. This was impermissible.

136 As a preliminary point, we observe that UTSS's submission at first instance, that the "Uninjuncted Proceeds could be much higher than US$80m", is not entirely the same as its present assertion that the Uninjuncted Proceeds were beyond *US$88.3m* due to the Tuas Cargo. This, however, has no material bearing on the outcome as the evidence demonstrates that the Liquidators' disclosure on the quantum of the Uninjuncted Proceeds was sufficient.

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137 We acknowledge UTSS's complaint that the Liquidators were not entirely clear about the total amount of Uninjuncted Proceeds. In both the 6 November JM Report and/or the 7 February JM Report, the figure of US$88.3m was nowhere to be found. However, there is no evidence that this lack of clarity was deliberate. UTSS does not allege that. In any event, the Liquidators' disclosure of the calculations of the various components of the Uninjuncted Proceeds, while not ideal, was sufficient. We explain.

138 In the 6 November JM Report, the Liquidators detailed the sale of Hin Leong's inventory as follows:

USD'M	Estimated realisable value as at 27 April 2020	Net sales proceeds[6]	Remaining estimated value to be realised as at 31 October 2020	Revised estimated realisable value as at 31 October 2020
		[A]	[B]	[A]+[B]
Universal Terminal				
- Tanks under court injunction	54.1	-	78.1	78.1
- Other tanks	22.9	42.4	-	42.4
Larger vessels chartered				
- Chang Bai San	1.5	-	(3.4)	(3.4)
- E Mei San	19.0	-	-	-
- Wu Yi San	14.0	-	24.0	24.0
- Sea Coral	3.0	3.2	-	3.2
- Ocean Queen	3.1	3.9	-	3.9
Barges chartered	5.2	3.7	-	3.7
37 & 41 Tuas Road	19.2	14.9	1.3	16.2
Total	**142.0**	**68.1**	**100.0**	**168.1**

In the report, the Liquidators explained how the components of the UTSS cargo were dealt with. As for the Tuas Cargo, the Liquidators stated that as at the date of the interim judicial managers' appointment:

> [Hin Leong] leased 26 shore tanks located at 37 & 41 Tuas Road from [Ocean Tankers], of which one was empty and 25 had cargo. The [judicial managers] have sold all cargo in 24 of these shore tanks with gross sales proceeds amounting to US$16.0 million (approximately US$14.9 million net of storage

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> fees and transaction costs) … To date, only one shore tank with minimal cargo remains leased by the JMs.

The estimated value to be realised from the Tuas Cargo as at 31 October 2020 was US$1.3m.

139 Subsequently, in the 7 February JM Report, the Liquidators indicated that they had realised additional net sales proceeds of US$20.2m from the sale of the inventory onboard the vessels Chang Bai San and Wu Yi San. The Liquidators also stated that as for the Tuas Cargo, "only one shore tank with cargo remains leased by the [judicial managers]" who were "in the process of selling these cargo".

140 Thus, the JM Reports had disclosed net sales proceeds of US$88.3m as at 7 February 2021 and that the sale proceeds from the future sale of the Tuas Cargo would be included in the Uninjuncted Proceeds. When UTSS had specifically inquired about the quantum of the sale proceeds from the oil in UTSS's tanks, the respondents' counsel specifically informed UTSS that the breakdown of the sale proceeds could be found in the JM Reports. Although the respondents' position appears to be that the total Uninjuncted Proceeds is US$88.3m, they do not explain why the future sale proceeds of the Tuas Cargo is excluded from the total sum, save for asserting that UTSS did not assert any security interest over the Tuas Cargo. In any case, the issue here is about the adequacy of the Liquidators' disclosure and not whether the exact amount of the Uninjuncted Proceeds was disclosed. It is apparent that the Liquidators had disclosed that the Uninjuncted Proceeds would include the initial US$88.3m and the future sale proceeds from the Tuas Cargo. It was always open to the Scheme Creditors to have sought confirmation from the Liquidators as to what those future sale proceeds were. In this regard, it is telling in our view that none

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of the other Scheme Creditors allege that they do not know what the quantum of the Uninjuncted Proceeds is.

141 We also do not find that UTSS's second point is made out. As a preliminary point, the respondents assert that UTSS did not raise its concerns regarding the Liquidators' purported financial incentives before the Judge. However, there is nothing to this point. UTSS submitted that "the Liquidators did not disclose the details of the financial incentive that they would derive from causing the Potential Secured Creditors to waive security in respect of the Uninjuncted Proceeds under the Scheme". The "Potential Secured Creditors should have legitimate concerns about the Liquidators retaining a substantial portion for their own benefit". In our judgment, these assertions are the essence of UTSS's submission on appeal that the Liquidators have failed to disclose the full details of their financial incentives in the event the Scheme is approved and sanctioned.

142 UTSS's allegation is directed at the Liquidators' fees and this overlaps with their first point that there was insufficient disclosure of the amount of the Uninjuncted Proceeds. The basis of the allegation is that the "greater the excess of the Uninjuncted Proceeds over the Scheme Consideration of US$80 million, the greater is the sum available for the Liquidators personally. This is because the Scheme Consideration is derived from the Uninjuncted Proceeds less the amount set aside for future liquidation and legal expenses. Once it is accepted that the total amount of the Uninjuncted Proceeds was disclosed, as we have found, and the Scheme Consideration is known, it is a matter of arithmetic as to what the sum available for the Liquidators' fees is. It is apparent that the Liquidators have been open about this. In the presentation slides of the 17 May Dialogue Session, it was disclosed that the remaining amount of the Uninjuncted Proceeds might be used for liquidation and legal expenses. In any

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event, as submitted by the respondents, all of the Liquidators' fees would be subject to review by independent assessors and taxation by the court. In the round, we conclude that the disclosure obligations are satisfied. The second allegation is therefore unmeritorious as well.

Conclusion

143 For the reasons above, we dismiss the present appeals save on the issue of whether the Judge ought to have considered the appellant's objections on the classification of creditors raised at the sanction hearing regardless of whether the appellant had offered good reason for not doing so earlier. The Judge ought to have considered the objections as the proper classification of creditors goes to the jurisdiction of the court to sanction a scheme. To this limited extent, the appeal is allowed in part.

144 In relation to costs, we award costs in the aggregate sum of $100,000 to the respondents. This comprises $70,000 for the appeals in CA 54 and CA 55, $10,000 (all in) for HC/SUM 2535/2024 (*ie*, UTSS's application for a stay of the execution of the Scheme) and $20,000 (all in) for HC/SUM 2845/2024 and HC/SUM 2846/2024 (*ie*, the respondents' application for the appeals to be conducted on an expedited basis). In determining costs, we have not taken into account the fact that UTSS has succeeded in part in the present appeals specifically on the issue of whether it was entitled to raise objections on classification at the sanction hearing. While we accept that this could affect the costs to be awarded, we have found that UTSS did not have a good reason or explanation for failing to raise its objections on classification earlier. Indeed, it may be said that the present appeals and the summonses are attributed to UTSS's failure to object to the classification of creditors in a timely manner, without good reason. We are also mindful that the estate and, by extension, the

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creditors, should not be made to bear the cost consequences of UTSS's conduct. Cost consequences should therefore follow and should serve as a signal to creditors of the importance of raising objections on the classification of creditors in a timely manner at the convening hearing. The usual consequential orders are to apply.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

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