

**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC(I) 22

Originating Application No 16 of 2026

In the matter of Section 210 of the Companies Act 1967

And

In the matter of Jetstar Asia Airways Pte Ltd

Jetstar Asia Airways Pte Ltd

... Applicant

GROUNDS OF DECISION

[Companies — Schemes of arrangement — Classification of creditors — Use of administrative convenience class]

[Companies — Schemes of arrangement — Departure from default procedure under Insolvency, Restructuring and Dissolution (Proofs of Debt in Schemes of Arrangement) Regulations 2020 — Power under s 68(14)(a) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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Re Jetstar Asia Airways Pte Ltd

[2026] SGHC(I) 22

Singapore International Commercial Court — Originating Application No 16 of 2026

Christopher Scott Sontchi JJ

21 May 2026

24 September 2026

Christopher Scott Sontchi JJ:

Introduction

1 In SIC/OA 16/2026 (“OA 16” or “Sanction Application”), the Applicant, Jetstar Asia Airways Pte Ltd sought the court’s sanction of its proposed scheme of arrangement (“Scheme”) under s 210 of the Companies Act 1967 (2020 Rev Ed) (“CA”). The Scheme formed part of the Qantas Group’s decision to cease operations of its low-cost carrier business in Southeast Asia and Japan,¹ and was intended to facilitate the settlement of the Applicant’s liabilities.² I heard the Applicant earlier and granted leave for it to convene a creditors’ meeting (“Scheme Meeting”) in SIC/OA 4/2026 (“OA 4” or “Convening Application”). Having considered the evidence and submissions in OA 16, I allowed the application for sanction of the Scheme.

¹ 1st Affidavit of John Antony Simeone dated 23 January 2026 filed in SIC/OA 4/2026 (“JAS-Convening-1”) at paras 7–14.

² JAS-Convening-1 at paras 47–59.

2 One of the notable features of the Scheme was the relatively novel application of an administrative convenience class. Counsel for the Applicant requested during the hearing of the Sanction Application that I take this opportunity to explain the genesis of the administrative convenience class and provide some guidance on its use. I therefore set out in these grounds of decision both my brief reasons for allowing the application and my observations on the administrative convenience class as may be relevant to Singapore law.

Background

3 The Sanction Application was made by the Applicant, a Singapore-incorporated company limited by shares. The Applicant was the operating entity of the “Jetstar Asia” business. On 11 June 2025, the directors of the Applicant publicly announced that they decided to permanently cease the “Jetstar Asia” business and wind up the Applicant on a solvent basis.³ To effect this, the Applicant secured financial support from the Qantas Group to enable it to effect a comprehensive refund programme to ensure that all eligible claims of the Applicant’s retail customers are repaid in full (“Refund Programme”), and to settle the Applicant’s remaining liabilities.⁴

4 The Refund Programme commenced in June 2025 and remains ongoing. As part of the Refund Programme, eligible customers of the Applicant are able to obtain full refunds of their unused tickets, vouchers and other credits through multiple channels, including direct email links sent to the customers and the Applicant’s customer contact centre.⁵ The Applicant also sought to process

³ JAS-Convening-1 at paras 13–16.

⁴ JAS-Convening-1 at para 15.

⁵ JAS-Convening-1 at para 24.

automatic refunds where possible,⁶ and undertook various measures to increase awareness and uptake of its Refund Programme.⁷ Nevertheless, as of January 2026, uptake of the Refund Programme remained at only around 30% of total eligible customers.⁸

Details of the Scheme

5 The Scheme was intended to bind two categories of the Applicant’s creditors. These categories, which are to be ascertained as at 4 March 2026, *ie*, the Ascertainment Date,⁹ are defined in the Scheme Document and the Explanatory Statement as follows:¹⁰

- (a) first, natural persons or authorised passenger sales agents with claims against the Applicant arising from:
 - (i) tickets or bookings purchased by or on behalf of a natural person in connection with passenger flights operated by the Applicant; or
 - (ii) vouchers issued by or on behalf of the Applicant for services to be rendered by the Applicant to a natural person,
- such persons referred to collectively as “Consumer Creditors” and claims as “Consumer Claims” respectively; and

⁶ JAS-Convening-1 at para 27.

⁷ JAS-Convening-1 at para 29.

⁸ JAS-Convening-1 at para 32.

⁹ JAS-Convening-1 at paras 37–38; SIC/OA 16/2026 at p 11.

¹⁰ JAS-Convening-1 at paras 37–45; SIC/OA 16/2026 at pp 11–13, 25–26, 29, 32–33, 53–55 and 60.

- (b) second, persons with claims against the Applicant other than Consumer Claims, but excluding certain categories such as employees, governmental taxation authorities, specified professional advisors and members of the Qantas Group or the Jetstar Asia Group (“Excluded Creditors” and “Excluded Claims” respectively), such persons referred to collectively as “Non-Consumer Creditors” and claims as “Non-Consumer Claims” respectively, and together with “Consumer Creditors”, the “Scheme Creditors”.

6 There are therefore two proposed classes of creditors under the Scheme: one consisting of the Consumer Creditors, and another consisting of the remaining creditors, *ie*, the Non-Consumer Creditors.

7 The Scheme also secures the release and discharge of the Applicant and certain third parties, including other members of the Qantas Group, Westbrook Investments Pte Ltd (a shareholder of the holding company of the Jetstar Asia Group), the Applicant’s advisors, and the directors, shareholders, employees, related parties and affiliates of the foregoing persons.¹¹

8 As the continued operations of the Applicant was dependent on the financial support of the Qantas Group to meet its financial obligations following the cessation of the “Jetstar Asia” business,¹² the Applicant intended to complete the Scheme and commence members’ voluntary liquidation by 30 June 2026, the date on which such support was to cease.¹³

¹¹ JAS-Convening-1 at para 47(d).

¹² JAS-Convening-1 at para 21.

¹³ JAS-Convening-1 at para 85.

Consumer Creditors

9 For the Consumer Claims, upon the Scheme becoming effective, all Consumer Claims will be assumed by Jetstar Airways Pty Ltd (“TransferCo”), an entity within the Qantas Group incorporated in Australia and operating in the Australian and New Zealand aviation markets, in accordance with a deed of assumption, and released against the Applicant. The Consumer Creditors will continue to have the same recourse against the TransferCo, including under the Refund Programme. Therefore, the Consumer Creditors will be entitled to full recovery in respect of their Consumer Claims against the Applicant (before the Scheme becomes effective) and against the TransferCo (after the Scheme becomes effective).

10 The Consumer Creditors will also be placed in a single separate class. They will not be required to take any action in connection with the Scheme, nor will they be entitled to vote on the Scheme.

11 The Consumer Creditors were notified by email of the proposed Scheme, and updates on the court proceedings were provided through a website maintained by the Applicant (“Scheme Website”). The email notification was provided in English, simplified Chinese and Japanese (as appropriate) and set out the salient terms of the Scheme as they applied to the Consumer Creditors, along with details of the Scheme Website. The Scheme Website also contained details of how to obtain a copy of the Originating Application in OA 4 and the supporting affidavits, and to request for copies of the Scheme Document and the Explanatory Statement by emailing the Scheme Manager at his designated email address.¹⁴ Notice of the Scheme Meeting was given by way of newspaper

¹⁴ JAS-Convening-1 at para 87(b).

advertisements in English-language newspapers in the core markets of the “Jetstar Asia” business, namely, Singapore, Japan, Thailand, Malaysia, Indonesia and China.

Non-Consumer Creditors

12 For the Non-Consumer Claims, upon the Scheme becoming effective, the Applicant shall pay such claims in cash within 20 business days, subject to a proof of debt regime. For the Non-Consumer Claims to be approved and paid, the Non-Consumer Creditor must file a proof of debt to be approved by the Scheme Manager, or, if there is disagreement with the Scheme Manager’s assessment, by an independent assessor to be appointed by the Court (“Independent Assessor”). The Scheme Manager was to notify all known Non-Consumer Creditors directly by email of the Convening Application and the Scheme Meeting, as well as any future updates.

Variation from default procedure

13 Finally, the Applicant sought to vary the default procedure under the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (“IRDA”) and the Insolvency, Restructuring and Dissolution (Proofs of Debt in Schemes of Arrangement) Regulations 2020 (“POD Regulations”) (“Variation Application”). The Applicant’s proposed procedure was as follows:¹⁵

- (a) First, the Non-Consumer Creditors will file their proofs of debt for the purposes of voting at the Scheme Meeting.

¹⁵ JAS-Convening-1 at paras 78–81.

- (b) Upon receiving the proofs of debt, the Scheme Manager will adjudicate on the proofs, and in doing so, will consider any cross-claims the Applicant may have against the Non-Consumer Creditors.
- (c) If a Non-Consumer Creditor is dissatisfied with the Scheme Manager's determination, they can request, at least 14 days before the scheduled Scheme Meeting, that the determination be re-assessed by an Independent Assessor, whose decision is final and binding.
- (d) Non-Consumer Creditors may also request to inspect other Non-Consumer Creditors' proofs of debt by making an application to the Independent Assessor.

14 This procedure differs from the procedure provided for at regs 4, 5 and 6 of the POD Regulations and s 68(9) of the IRDA, as the Independent Assessor is appointed from the outset, rather than only upon request or disagreement with the assessment of the chairperson of the meeting. Further, only one Independent Assessor will be appointed. The Non-Consumer Creditors will have the same time to object to the Scheme Manager's adjudication as they would under the POD Regulations, *ie*, 14 days. Finally, the Independent Assessor can directly grant permission for the Non-Consumer Creditors to inspect the proofs of debt filed by other Non-Consumer Creditors, but the Non-Consumer Creditors no longer have the ability to have the Scheme Manager's acceptance of other Non-Consumer Creditors' proofs of debt re-assessed.

15 I allowed the Variation Application sought in OA 4. I set out briefly my reasons for doing so.

16 Pursuant to s 68(14)(a) of the IRDA, the court has the power to approve any variation in or substitution of the procedure relating to the inspection and

adjudication of proofs of debts filed by creditors in a scheme of arrangement. It is clear from the legislative history of s 68(14) of the IRDA, and its precursor in s 211F(14) of the Companies Act (Cap 50, 2006 Rev Ed), that this power was granted to “provide flexibility in the proof of debt system” in view of the default procedure’s potential to “delay the scheme process”: Ministry of Law, “Ministry’s Response to Feedback from Public Consultation on the Draft Companies (Amendment) Bill 2017 to Strengthen Singapore as an International Centre for Debt Restructuring” (27 February 2017) at paras 7.1.1–7.1.3 <https://www.mlaw.gov.sg/files/Annex_A-Goverment_Response_to_Public%20Consult_Feedback_for_Companies_Act_Amendments.pdf> (accessed 24 August 2026). Therefore, an application for variation or substitution of the default procedure set out in the POD Regulations ought to be granted where the proposed procedure is more efficient and practical and does not cause substantial prejudice to the parties involved.

17 Here, I agreed with the Applicant that the substitution sought was more efficient and practical, while little, if any, prejudice would be occasioned.¹⁶ Having the Independent Assessor appointed from the outset avoids any delay which may be occasioned by the process of agreeing on and appointing the Independent Assessor should any disagreements arise, and also avoids the costs and difficulties associated with appointing multiple independent assessors. Further, as the Applicant submitted, it would limit the scope of dispute between the Non-Consumer Creditors and the Applicant, and thereby minimise any delay between adjudication and the Scheme Meeting. I also did not think the inability to request re-assessment of other Non-Consumer Creditors’ proofs of debt by the Independent Assessor was prejudicial, as each Non-Consumer Creditor was

¹⁶ Applicant’s Written Submissions dated 27 February 2026 filed in SIC/OA 4/2026 (“AWS-Convening”) at paras 71–75.

entitled to full recovery of their approved claims. This was unlike the typical insolvent scheme where a larger approved claim will lead to a corresponding reduction in the amount received by other scheme creditors. I therefore considered it appropriate to allow the proposed departure from the default procedure under the POD Regulations.

Notice and voting

18 Upon hearing the Applicant on 4 March 2026, I granted the orders sought by the Applicant in the Convening Application, including:¹⁷

- (a) leave for the Applicant to convene the Scheme Meeting;
- (b) that all Consumer Creditors be classified in a separate administrative convenience class of creditors; and
- (c) approval for the Applicant to depart from the default procedure under the POD Regulations in the manner sought in the Variation Application.

19 On the same day, notice was given in the manner set out at [11]–[12] above to the Consumer Creditors and the Non-Consumer Creditors, and the Scheme Meeting was advertised in Singapore, Indonesia, Thailand, Hong Kong, Malaysia and Japan.¹⁸ No objections were raised by any of the Scheme Creditors.¹⁹

¹⁷ SIC/ORC 22/2026 at paras 1 and 2.

¹⁸ 1st Affidavit of John Antony Simeone dated 21 April 2026 filed in SIC/OA 16/2026 (“JAS-Sanction-1”) at paras 14–16.

¹⁹ JAS-Sanction-1 at para 17.

20 By 1 April 2026, the Scheme Manager notified all 12 Non-Consumer Creditors who had submitted proofs of debt of the results of his adjudication, and provided a list of those Non-Consumer Creditors.²⁰ While the majority of the proofs of debts submitted were accepted in full or with minor adjustments, the proof of debt submitted by Pacific Airlines Aviation Joint Stock Company (“Pacific Airlines”) was rejected in full by the Scheme Manager after some further exchanges between Pacific Airlines and the Scheme Manager.²¹ On 1 April 2026, Pacific Airlines applied in writing to the Independent Assessor for a review of the Scheme Manager’s adjudication.²² The Independent Assessor issued his written determination on 14 April 2026, in which he also rejected Pacific Airlines’s claim in full.²³ Therefore, at the time of the Scheme Meeting, Pacific Airlines did not have any approved claims and could not vote at the Scheme Meeting or receive payments under the Scheme.

21 The Scheme Meeting was held as scheduled on 15 April 2026, both physically and via videoconference. As part of the Scheme Meeting, the Scheme Manager delivered a presentation to the attendees on the progress thus far, the list of Non-Consumer Creditors and their proxies in attendance, their approved claim amounts and an overview of the Scheme, including next steps and indicative timelines.²⁴ All nine Non-Consumer Creditors present voted in favour of the Scheme.²⁵

²⁰ JAS-Sanction-1 at paras 20–23.

²¹ JAS-Sanction-1 at paras 24–27.

²² JAS-Sanction-1 at para 28.

²³ JAS-Sanction-1 at para 32.

²⁴ JAS-Sanction-1 at paras 41–44.

²⁵ JAS-Sanction-1 at para 46.

22 On 16 April 2026, the Scheme Manager released the results of the Scheme Meeting and provided a copy of the presentation slides by email to the Non-Consumer Creditors and via the Scheme Website.²⁶

Pacific Airlines's objection

23 On 24 April 2026, by way of a solicitor's covering affidavit, Pacific Airlines indicated its disagreement with the rejection of its proof of debt and its consequent exclusion from participating in the Scheme,²⁷ as well as its intention to file a notice of disagreement ahead of the hearing of the Sanction Application. The Applicant then filed a further affidavit to set out further updates and provide the Court with the context and supporting documents relating to the rejection of Pacific Airlines's claim.²⁸ A formal Notice of Disagreement pursuant to s 68(10) of the IRDA read with r 46 of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 was filed by Pacific Airlines on 14 May 2026.

24 Nevertheless, on 20 May 2026, one day before the hearing of the Sanction Application, Pacific Airlines wrote to the Court to inform that they had settled the matter with the Applicant and intended to withdraw the Notice of Disagreement with no order as to costs.²⁹ Counsel for Pacific Airlines also confirmed during the hearing that all claims and counterclaims subject to the Notice of Disagreement had been settled, and that Pacific Airlines no longer had any claims falling within the Scheme.³⁰ Consequently, as of the hearing of the

²⁶ JAS-Sanction-1 at para 47.

²⁷ 1st Affidavit of Tham Kai Lun, Josiah dated 24 April 2026 at Tab 1.

²⁸ 2nd Affidavit of John Antony Simeone dated 4 May 2026 filed in SIC/OA 16/2026.

²⁹ Letter to Court from Allen & Gledhill LLP dated 20 May 2026.

³⁰ Minute Sheet of 21 May 2026 at p 4.

Sanction Application on 21 May 2026, no Scheme Creditor opposed the Scheme.

Sanction of the Scheme

25 In general, the court must be satisfied of the following before it can proceed to sanction a proposed scheme (*The Royal Bank of Scotland NV v TT International Ltd* [2012] 2 SLR 213 (“*TT International*”) at [70]):

- (a) that the statutory provisions have been complied with, and in particular:
 - (i) that the scheme meeting was held in accordance with the order of court convening the scheme meeting;
 - (ii) the resolution at the meeting approving the scheme was passed with the requisite statutory majority, *ie*, a majority in number of each class of creditors present and voting in person or by proxy representing at least three-fourths in value of that class (ss 210(3AB)(a) and 210(3AB)(b) of the CA);
- (b) that the classification of creditors was appropriate, *ie*, that persons whose rights are so dissimilar that they cannot sensibly consult together with a view to their common interest must be classed separately (*UT Singapore Services Pte Ltd v Goh Thien Phong* [2025] 1 SLR 687 (“*UT Singapore*”) at [60] and [92]);
- (c) that those who attended the meeting were fairly representative of the class, 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;

- (d) 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;
- (e) that the company has disclosed, by the time of the scheme meeting, sufficient information to ensure that those voting at the meeting are able to exercise their voting rights meaningfully (*SK Engineering & Construction Co Ltd v Conchubar Aromatics Ltd* [2017] 2 SLR 898 at [88]); and
- (f) that there is no “blot” or defect in the scheme that would, for example, make it unlawful or in any other way inoperable (*UT Singapore* at [90]).

26 I was satisfied that the foregoing requirements were met, especially in view of the unanimous approval of the Non-Consumer Creditors who voted at the Scheme Meeting, as well as the withdrawal of Pacific Airlines’s Notice of Disagreement. The Scheme Document was made accessible to all Scheme Creditors, and the accompanying Explanatory Statement had set out the salient features of the Scheme, the proposed timeline, risk factors and expected returns under the Scheme.³¹ The Scheme was manifestly reasonable, since both the Consumer Creditors and the Non-Consumer Creditors stood to be paid in full under the Scheme (subject to the adjudication of the Scheme Manager and Independent Assessor). I also noted that legal advice from Australian counsel confirming the effectiveness of the deed of assumption as against the TransferCo had been obtained.³²

³¹ JAS-Convening-1 at Tab 6; JAS-Sanction-1 at Tab 2.

³² 2nd Affidavit of John Antony Simeone dated 26 February 2026 filed in SIC/OA 4/2026 (“JAS-Convening-2”) at paras 26–27 and Tab 8.

27 The one notable feature of the Scheme was the use of an administrative convenience class, and the question which had to be answered was whether placing all Consumer Creditors within one class and taking their consent to the Scheme as deemed could satisfy the statutory requirements at [25(a)] above, as well as the proper classification requirement at [25(b)] above. It is to this question that I now turn.

The administrative convenience class

The Applicant's submissions

28 To recapitulate, the Applicant proposed that, in the interests of the Scheme's efficacy and feasibility, the Consumer Creditors will all be placed in an administrative convenience class which will be excluded from voting and deemed to have unanimously approved the terms of the Scheme. Consequently, the Consumer Creditors will also not need to submit a proof of debt in respect of the Consumer Claims or take any other action to vote on the terms of the Scheme (see [10] above).³³

29 The administrative convenience class to be created comprised around 194,200 Consumer Creditors as of 14 January 2026. The average claim value per customer with tickets or bookings was \$161.67, and the average claim value per customer holding vouchers with balance was \$58.03. The aggregate value of the Consumer Claims was around \$11,394,000.³⁴ Additional refunds were processed between 14 January 2026 and 23 February 2026, and these figures were revised to approximately 194,000 Consumer Creditors with an aggregate

³³ JAS-Convening-1 at para 50.

³⁴ JAS-Convening-1 at Tab 8, p 310.

claim value of approximately \$11,370,278.³⁵ By comparison, the total approved claim amount of the Non-Consumer Claims was \$1,065,521.88 as of the Scheme Meeting.³⁶

30 The Applicant relied on the decision of Justice Aidan Xu in *Re Zipmex Pte Ltd* [2024] 3 SLR 724 (“*Zipmex (Sanction)*”) for the proposition that the use of the administrative convenience class is a valid exception to the dissimilarity principle since, according to the Applicant, “its use obviates the application of the dissimilarity principle.”³⁷ The control is that the use of an administrative convenience class must be in the interests of efficacy and feasibility, and no undue prejudice must be caused to the creditors placed in such a class.³⁸

31 According to the Applicant, placing the Consumer Creditors in a single administrative convenience class was appropriate for the following reasons:

(a) First, there were around 194,200 Consumer Creditors at the time of the Convening Application. A sizeable number, *ie*, 145,997, of them held vouchers with an available balance of below \$20. It would therefore be administratively impractical for the Applicant to convene a meeting of all Consumer Creditors to vote on the Scheme.³⁹

(b) Second, the Applicant contends that securing active Consumer Creditor participation will be difficult. It says that this can be inferred from the low response rate in respect of the Refund Programme.

³⁵ JAS-Convening-2 at para 8.

³⁶ JAS-Sanction-1 at Tab 20, p 623.

³⁷ AWS-Convening at para 24.

³⁸ AWS-Convening at paras 25–26.

³⁹ JAS-Convening-1 at para 51(a).

Therefore, a meeting of Consumer Creditors, even if convened, is unlikely to be meaningfully representative of the class. Further, it would be unfair to require that the Consumer Creditors file a proof of debt in relation to their relatively low-value claims, with the consequence that many Consumer Creditors who do not file a proof of debt will be excluded from their entitlements under the Scheme.⁴⁰ This stands in contrast to the Non-Consumer Creditors, who have larger claims and are fewer in number, and would likely be aware of their rights against the Applicant. Consequently, it was not unfair to require the Non-Consumer Creditors to file proofs of debt while dispensing with this requirement for the Consumer Creditors.

(c) Third, the infrastructure required to enable the large number of Consumer Creditors to vote on the Scheme was likely to be disproportionately expensive and cumbersome. A fee estimate obtained by the Scheme Manager placed the cost of providing such infrastructure at around US\$346,000 to US\$500,000.⁴¹

(d) Fourth, requiring the Consumer Creditors' active participation in the Scheme would also disadvantage them, as it would require the ongoing Refund Programme to be paused to avoid uncertainty as to which Consumer Claims are being voted on and in what amounts. This may also cause confusion among the Consumer Creditors and lead to a lower response rate in relation to the Refund Programme.⁴²

⁴⁰ AWS-Convening at para 48.

⁴¹ JAS-Sanction-1 at para 51(c).

⁴² JAS-Sanction-1 at para 51(d).

(e) Fifth, no undue prejudice will be occasioned to the Consumer Creditors, as they will be subject to the safeguard of an ongoing entitlement to full recovery against either the Applicant or the TransferCo as explained at [9] above.⁴³

The applicable legal principles

32 Although the question of proper classification is primarily a matter to be considered at the convening stage, the appropriateness of classification nevertheless remains a requirement which must be satisfied before the court sanctions a particular scheme: *UT Singapore* at [60]. I therefore set out in the following paragraphs my reasons for allowing the creation of a non-voting administrative convenience class comprising all the Consumer Creditors, as sought by the Applicant.

33 In considering the creation and sanction of an administrative convenience class in Singapore law, the natural first port of call would be the decisions of Xu J in *Re Zipmex Co Ltd* [2023] 4 SLR 1100 (“*Zipmex (Moratoria)*”) and *Zipmex (Sanction)*, which were the first to consider such classes in Singapore.

34 The administrative convenience class in these two cases was created for some users of the “Zipmex App”, a cryptocurrency trading platform. Customer creditors whose withheld assets held by the platform were of values below US\$5,000 were to be placed in this administrative convenience class and were to be excluded from the voting exercise unless they indicated their desire to participate. In exchange, they were offered full access to their withheld assets following an investment: *Zipmex (Sanction)* at [4].

⁴³ JAS-Sanction-1 at para 52.

35 Xu J had in *Re Zipmex (Moratoria)* at [6]–[9] indicated concerns as to (a) the juridical basis for the creation of an administrative convenience class, *ie*, a class of unsecured customers whose debt values are less than or equal to a certain threshold, and who will not be entitled to vote on the scheme, and (b) the power of the court to make such an order prior to an application for approval of a so-called “pre-packaged” scheme under s 71 of the IRDA. *Zipmex (Sanction)* then clarified that the creation of an administrative convenience class was premised on the words of s 210 of the CA itself, which allows leeway to the court to redefine the majority required for approval (at [13]). This discretion may then be imported into s 71(1) of the IRDA: *Zipmex (Sanction)* at [14]. Consequently, the administrative convenience class sought to be created in that case, which contained close to 70,000 customer creditors (*Zipmex (Moratoria)* at [6]), was deemed a proper class, and the deemed approval was found to fulfil the requirements of s 71(3)(d) of the IRDA: *Zipmex (Sanction)* at [15].

36 I would echo the well-reasoned observations set out in *Zipmex (Sanction)* at [11]–[12] that “some compromise of strict rights and equitableness is sometimes required for the sake of efficacy and feasibility”, but there remains a need to ensure that there is no “undue prejudice”, which can be catered for by “some *quid pro quo* for the deemed consent to be taken from the Administrative Convenience Class, such as full payment.”

37 The present case differs slightly. First, the present application was not an application for approval of a pre-packaged scheme under s 71 of the IRDA. Second, the Consumer Creditors were not given the option to participate in voting. I was therefore called upon to determine whether the use of an administrative convenience class on the present facts was equally appropriate. I first consider the statutory basis of the court’s power to sanction the creation of an administrative convenience class, before turning to the guidance that may be

derived from the development and current contours of US jurisprudence on this topic.

Statutory basis

38 I first consider the juridical basis for the court’s power to authorise the creation of an administrative convenience class.

39 The possibility of creating an administrative convenience class as part of a plan is expressly contemplated under Chapter 11 of the Bankruptcy Code 11 USC (US) (1978) (“US Bankruptcy Code”). § 1122(b) of the US Bankruptcy Code expressly empowers the creation of a class which is “reasonable and necessary for administrative convenience”. I reproduce § 1122(b) below:

A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

40 This works in tandem with § 1126(f) of the US Bankruptcy Code, under which an unimpaired class (*ie*, one whose interests are entirely unaffected by the proposed plan) is conclusively presumed to have accepted the plan, such that it is not necessary to solicit acceptance of the plan from each creditor of that class. I reproduce § 1126(f) in full below:

Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

41 Therefore, an administrative convenience class of creditors designated under § 1122(b) of the US Bankruptcy Code, whose claims are paid in full or are otherwise unimpaired within the meaning of § 1124, will be deemed to have

consented to the proposed restructuring plan under § 1126(f). § 1122(b) allows the designation of such a class and sets out the criteria of reasonableness and necessity which the court must apply. § 1126(f) in turn provides the mechanism by which the solicitation of their votes may be dispensed with.

42 There is no express provision under Singapore law which sanctions the creation of an administrative convenience class. Section 210(3AB) of the CA sets out the statutory voting requirement that must be satisfied before a proposed plan can become binding. I reproduce the relevant parts below:

(3AB) The conditions referred to in subsection (3AA) are as follows:

- (a) *unless the Court orders otherwise, a majority in number of —*
 - (i) the creditors or class of creditors;
 - ...
 - present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to the compromise or arrangement;
- (b) the majority in number referred to, or *such number as the Court may order*, under paragraph (a) represents three-fourths in value of —
 - (i) the creditors or class of creditors;
 - ...
 - present and voting either in person or by proxy at the meeting or the adjourned meeting, as the case may be;
- (c) the compromise or arrangement is approved by order of the Court.

[emphasis added]

43 While the provision makes no express reference to the concept of an administrative convenience class, it is clear that s 210(3AB)(a) of the CA gives the court the power to vary the required voting threshold before a scheme may

be sanctioned and become binding, at least in so far as the majority in number requirement is concerned. Section 210(1) of the CA similarly confers a broad discretion on the court at the convening stage, pursuant to which the court *may* summon a scheme meeting “in such manner as the Court directs”. In my view, and in agreement with the views expressed in *Zipmex (Sanction)* at [13], the court has considerable latitude in determining how the voting requirements under s 210(3AB) of the CA can be satisfied, and it is through this latitude that the creation of an administrative convenience class in the manner conceived by the Applicant finds its statutory basis.

44 Having located the statutory basis, the question remains as to what the limits to the exercise of such a discretion are. While s 210(3AB) of the CA is silent on this, the principles set out at *Zipmex (Sanction)* at [11]–[12] provide a sound starting point: it is permissible for creditors (or members) to be placed in a separate class and for the consent of that class to be deemed without voting, through the court exercising its discretion under s 210(3AB) of the CA, where efficacy and practicability are achieved without undue prejudice.

Exercise of discretion

45 In *Zipmex (Sanction)*, the provision of full payment to creditors placed in the administrative convenience class, together with the option of voting on the proposed scheme, was considered adequate protection such that there was no undue prejudice to those creditors. Nevertheless, as there is no other reported instance of the use of an administrative convenience class locally, I turn to briefly consult US jurisprudence on the creation and use of an administrative convenience class.

46 The first point of note is that the practice of paying out creditors with small claims for reasons of administrative convenience pre-dates § 1122(b) of

the US Bankruptcy Code. The Senate Report on the Bankruptcy Reform Act of 1978 (Senate Report No 95-989, 95th Congress, 2d Session 118 no 26 (1978)) noted that § 1122(b) is a codification of existing practice. That report also cites earlier precedents where the court approved of discrimination in the paying out of small unsecured creditors in full, *eg*, in *In re New Rochelle Coal & Lumber Co.*, 77 F. 2d 881, 882–883 (C.A. 2nd Cir, 1935) and *In re Realty Associates Securities Corp* 53 F Supp 1010, 1011 (EDNY, 1943). The benefits of doing so are clear: it avoids the administrative burden, and the corresponding time and expense that the debtor company may be put to in addressing the large number of relatively small claims: Daniel J Bussel *et al*, *Bankruptcy* (Foundation Press, 11th Ed, 2020) at p 673. This was echoed in *In re Hanish, LLC* 570 BR 4, 17 (Bankr D NH, 2017) (“*Hanish, LLC*”), where the court found that “[t]he legislative history of 11 U.S.C. § 1122(b) reflects that the intent was to permit the debtor [to] avoid having to solicit acceptances from a multitude of small unsecured claimholders by simply paying them in full on the effective date.”

47 More recent jurisprudence on the use of the administrative convenience class has grappled with the test for classification of claims under § 1122(a), *ie*, whether such claim or interest is substantially similar to the other claims or interests of a class. The first principle which consistently emerges is that the intent of § 1122(b) of the US Bankruptcy Code is to “weed out numerous claims and thereby avoid administrative cost”, and it is not to “allow gamesmanship in vote getting”: *In re S & W Enterprise* 37 BR 153, 159 (Bankr ND Ill, 1984) (“*S&W Enterprise*”), quoting William L Norton Jr, *Norton Bankruptcy Law and Practice* vol 3 (Callaghan & Company, 1st Ed, 1981) at section 60.05.

48 To avoid abuse, *S&W Enterprise* applied the threshold of necessity, which must mean “something more than just tending to ease the administrative burden” on the estate. Thus, an administrative convenience class can be

permitted only where classifying similar claims in the same class would be “truly burdensome”: *S&W Enterprise* at 162.

49 Classic examples of an abuse of the administrative convenience class are where only one or a few creditors are sought to be placed in such a class with no significant reduction in the administrative burden: see *In re Autterson* 547 BR 372, 396 (Bankr D Colo, 2016) and *In re National/Northway Ltd Partnership* 279 BR 17, 24–25 (Bankr D Mass, 2002). In the local context, the court must remain wary of gerrymandering in the classification of creditors and scrutinise the justification for the separate classification of certain creditors into an administrative convenience class, for example, where the use of such an administrative convenience class is intended to engineer the conditions for a cram-down under s 70 of the IRDA. Chief Judge Bruce A Harwood in *Hanish, LLC* (at 17) set out several points which the court ought to consider before granting its imprimatur to the use of such a class, including “how many claims fall within the class, the individual amounts of those claims, the total amount of claims within the class, the debtor’s financial wherewithal to pay them at an accelerated rate, and a present value comparison of the payments to be received by the administrative convenience class and the general unsecured creditors.” It must also be shown that treating the claims as falling within the same class would be “truly burdensome” before the court should consider classifying them separately: *S&W Enterprise* at 162. In my view, these general principles and considerations apply equally in the context of creditor classification for schemes of arrangements under Singapore law.

50 There is, however, one notable point of divergence between the two jurisdictions. It has been observed that US law does not require the court to proactively scrutinise whether the use of the administrative convenience class is “reasonable and necessary” in the absence of any creditor objection: Sarah

Paterson & Adrian Walters, “Selective Corporate Restructuring Strategy” (2023) 86(2) *Modern Law Review* 436 at 448–449.

51 Regardless of whether such an observation accurately represents the position under US law, the same cannot be said of Singapore law. Given that the proper classification of creditors is a crucial element in a scheme of arrangement and goes to the court’s jurisdiction to sanction a scheme (*UT Singapore* at [1]), the court must carefully scrutinise the use of an administrative convenience class in all cases. This is because its use is a departure from the general principle that persons whose rights are sufficiently similar that they can consult together with a view to their common interests should be placed in the same class: *TT International* at [130]. The court must therefore proactively ensure that when such an exception is invoked, the applicant is able to justify its invocation as being reasonable and necessary, having regard to the circumstances of the case holistically. This must be done even in the absence of any disagreement or protest by the creditors themselves. In particular, the court must weigh the prejudice occasioned to those who are placed in such an administrative convenience class (and are thereby excluded from voting), as well as to those outside such an administrative convenience class, who may receive different (and perhaps less favourable) treatment under the scheme. The prejudice caused must be weighed against the gains in efficiency or administrative convenience, to which the applicant must be able to point definitively.

52 The court’s discretion under s 210(3AB) of the CA to permit the creation of a class that is not required to vote on the proposed scheme must also be exercised judiciously. Drawing further guidance from Chapter 11 of the US Bankruptcy Code, and in particular § 1126(f), I find that one instance where the court’s discretion can be suitably exercised is where the class is “unimpaired”,

ie, where the creditors in that class are offered full payment (see also *Zipmex (Sanction)* at [12]). Granting those in the administrative convenience class the ability to vote if they so wish, as was done in *Zipmex (Sanction)*, is therefore helpful, but not necessary, in ensuring that no undue prejudice is caused by the use of such a class. In so far as Xu J had suggested that full payment is merely one way in which a “*quid pro quo*” can be effected, and that consequently, a class may potentially be excluded from voting on the scheme even where full payment is not provided for, I would similarly observe that the door to such a possibility remains open on the statutory language of the CA and the IRDA, subject to the overriding consideration that there must be no undue prejudice. It is true that US law contemplates the creation of an impaired administrative convenience class, *ie*, one where the creditors of the class are not paid the full value of their claims: *In re United Marine, Inc* 197 BR 942, 949 (Bankr SD Fla, 1996) (involving a consensual plan). But such impaired administrative convenience classes would be entitled to vote on the reorganisation plan. As this issue does not arise on the present facts, the question of permitting a non-voting “impaired” class would be best left for consideration in an appropriate case.

53 For completeness, I would observe that, in lieu of an administrative convenience class, it is also open to a scheme applicant to exclude unsecured creditors with relatively small claims from the scheme altogether. An example of this can be found in *Re Virgin Atlantic Airways Ltd (No 2)* [2021] 1 BCLC 105 (“*Virgin Atlantic*”), which similarly concerned the proposed restructuring of an airline using a restructuring plan under English law. In *Virgin Atlantic*, the proposed restructuring excluded a significant number of trade creditors, including those who were owed less than £50,000 as at the cut-off date. The Court had to be satisfied that their exclusion “was not arbitrary or designed to manipulate the class”: *Virgin Atlantic* at [64]. On the facts, the applicant had explained that including trade creditors with claims of

under £50,000 would require reviewing contracts with more than 1,000 such suppliers, and “impose an additional logistical burden [...] where time and resources are already very limited”, and therefore “the cost savings to be borne by including those below £50,000 are outweighed by the practical time and cost of including them”: *Virgin Atlantic* at [65]. The Court was satisfied that the justification proffered was reasonable, as “the burden of including an extra 1,000 such trade creditors (ie about six times the current number) in the Restructuring Plan would only result in a further reduction in the Company’s debt burden of about £1 million (eg 20% of 10% of £51.67 million)”: *Virgin Atlantic* at [66].

54 Therefore, to sanction the creation of an administrative convenience class, the court must be satisfied that there is no undue prejudice. First, the court must assess whether the use of such a class is reasonable and necessary. The scheme applicant must be able to justify and substantiate the gains in efficacy, feasibility or administrative convenience arising from the creation of such a class. The court must then consider the prejudice that would be occasioned to both the members of that class and the other parties affected by the scheme. An administrative convenience class should not be sanctioned when the applicant’s intention, as ascertained from the surrounding circumstances, is to gerrymander or artificially engineer the use of the cross-class cram-down mechanism under s 70 of the IRDA, or where the creation of such a class is otherwise not done *bona fide* or is designed to skirt around opposition: *Re DSG Asia Holdings Pte Ltd* [2022] 3 SLR 1250 at [66]. Where the administrative convenience class sought to be created would not be entitled to vote on the scheme, it must be clear that their interests are not adversely impacted by the scheme. A clear example of this is where the class creditors are offered full payment on their claims against the scheme company.

My decision

55 Applying the principles as formulated above, I found that the use of the administrative convenience class in the manner sought by the Applicant was appropriate. First, and most importantly, all the Scheme Creditors have the right to be paid in full for their claims against the Applicant (subject to the Scheme Manager's or the Independent Assessor's assessment of the Non-Consumer Creditors' proofs of debt). The present Scheme is unlike a conventional insolvent scheme of arrangement, where any additional payment to one class comes at the expense of payments to other classes. Therefore, the Consumer Creditors who are placed in the administrative convenience class are not adversely affected by the Scheme, nor are the Non-Consumer Creditors adversely affected by the Consumer Creditors being paid in full. The proposal under the Scheme ensures that the Refund Programme continues running, and that the Consumer Creditors continue to be able to request refunds. The Applicant has explained, and I agree, that requiring the Consumer Creditors to vote on the Scheme would in fact cause greater prejudice, since the Refund Programme would have to be paused to allow voting to take place and for the votes to be tabulated accurately.

56 Second, the Applicant has also demonstrated the efficacy and administrative convenience achieved through the use of the administrative convenience class. It has given evidence that the time and resources required to allow around 194,000 individual Consumer Creditors to vote would be considerable, and disproportionate given the average quantum of their claims. I also accept that, given the low participation rates in the Refund Programme, significant time and expense would have to be expended to secure meaningful participation from a general class of unsecured creditors. This is particularly significant on the present facts, as the sum total of the Consumer Claims is more

than ten times the sum total of the approved Non-Consumer Claims. The merits of using a separate, non-voting administrative convenience class for the Consumer Creditors were thus evident.

57 Third, given that full payment will be provided, and coupled with the unanimous support of the Non-Consumer Creditors for the Scheme, I did not see any basis to suspect that the creation of the administrative convenience class was not done *bona fide*. My view of the Applicant's efforts was quite the opposite: that it was endeavouring to ensure that the Consumer Creditors were not prejudiced by the planned restructuring and cessation of the Applicant's business.

58 I therefore found that the Applicant's use of an administrative convenience class containing all the Consumer Creditors, as a departure from the general principles of classification, as well as their exclusion from voting on the Scheme, was appropriate and satisfied the statutory requirements set out at [25(a)] above, and the proper classification requirement set out at [25(b)] above.

Conclusion

59 The final point to be addressed is the application to dispense with the requirement that the order approving the Scheme be annexed to every copy of the Applicant's constitution, as set out in s 210(6) of the CA. As I indicated during the hearing of the Sanction Application, given that the intention was for the Applicant to be wound up after the Scheme takes effect, it was unnecessary for the constitution to be so amended. Accordingly, pursuant to s 210(7) of the CA, I exempted the Applicant from compliance with the requirements of s 210(6) of the CA.

60 In the premises, applying the test set out at [25] above, I granted OA 16 in its entirety. While my decision was perhaps unremarkable given the unanimous support for the Scheme, these grounds of decision are issued to offer guidance on the use of administrative convenience classes in Singapore.

Christopher Scott Sontchi
International Judge

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